

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

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Published July 27, 2001

Volume 25 Issue No.7

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.

THE 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 OF THE SOUTH CAROLINA STATE REGISTER

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 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.

2001 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	1/12	2/9	3/9	4/13	5/11	6/8	7/13	8/10	9/14	10/12	11/9	12/14
Publishing Date	1/26	2/23	3/23	4/27	5/25	6/22	7/27	8/24	9/28	10/26	11/23	12/28

REPRODUCING OFFICIAL DOCUMENTS

All documents appearing in the South Carolina *State Register* are prepared and printed at public expense. All media services are especially encouraged to give wide publicity to all documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

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

CERTIFICATE

Pursuant to Section 1-23-20, Code of Laws of South Carolina, 1976, this issue contains all previously unpublished documents required to be published and filed before the closing date of the issue.

Lynn P. Bartlett
Editor

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 renewable once.

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SUBSCRIPTIONS

The *State Register* is published on the fourth Friday of each month by the Legislative Council of the General Assembly of the State of South Carolina. Subscription rate is \$95.00 per year postpaid to points in the United States. Partial subscriptions may be ordered at the rate of \$8.00 per issue for the remainder of a subscription term. Subscriptions begin July 1 and end June 30.

Changes of address, notices, subscription orders, and undelivered copies should be sent to:

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Enclosed is my check or money order for \$_____. Date _____

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 South Carolina General Assembly Home Page: www.scstatehouse.net

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2541	R109	SR25-7	Lic Comm Residential Care Facilities		Department of Health and Envir Control
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REQUEST TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

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2573	4 24 01	Food Stamp Program	Department of Social Services
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DOC NO.	DATE	SUBJECT	AGENCY
2360	1 17 01	LIFE Scholarship	Commission on Higher Education

* Approval pending Governor's signature on Joint Resolutions

2 EXECUTIVE ORDERS

No. 2001-13

WHEREAS, Section 4-5-120 of the South Carolina Code of Laws sets forth a procedure for annexing part of a county in which 10 percent of the registered voters in an area of one county may petition in writing that such area be transferred to another county; and

WHEREAS, Section 4-5-130 through Section 4-5-160 of the South Carolina Code of Laws provides that when a petition as prescribed by Section 4-5-120 has been presented to the Governor, the Governor shall within 30 days appoint a commission of four persons, which shall, among other things, carefully investigate the facts relating to the area and report in writing to the Governor as the Governor may direct for his information; and

WHEREAS, pursuant to Section 4-5-120 of the South Carolina Code of Laws, the Greenwood Development Corporation has deposited \$2,500 and has filed an annexation petition with the Charleston County Clerk of Court; and

WHEREAS, the Greenwood Development Corporation has transmitted a petition to the Governor's Office requesting to annex 18 acres of land in Charleston County with 600 acres of land in Dorchester County; and

WHEREAS, Ral Z. Smith and John H. Brown of Mt. Pleasant; John Morgan of North Charleston; and Cathy Anthony of Goose Creek are fit and proper persons to serve on the commission.

NOW, THEREFORE, pursuant to the authority vested in the undersigned by the Constitution and Statutes of this State, I hereby appoint Ral Z. Smith of Mt. Pleasant; John H. Brown of Mt. Pleasant; John Morgan of North Charleston; and Cathy Anthony of Goose Creek to examine the requested annexation in Charleston and Dorchester Counties.

The Commission shall:

- Contract for the survey and location of the proposed change of line, and for such purpose employ three competent disinterested surveyors, who are nonresidents of the counties affected, two to be selected by the commission and the third by the two selected by the commission; and
- File certified plats of the line with the Secretary of State and with the respective clerks of court of each county affected thereby, and deposit an amount of money sufficient to cover expenses of survey and plats and other necessary expenses including advertising with the treasurer of the county whose territory is proposed to be reduced; and
- Carefully investigate all facts relating to the area, population and assessed property values of the territory proposed to be severed and that remaining, the proximity of the line to any courthouse and the proper amount of indebtedness of the county losing area to be assessed to the county gaining such area; and
- Report in writing to the Governor upon all such relevant matters stated herein and otherwise required by law; and
- Report to the Governor an itemized statement of the expense of the survey and plats; and
- Shall submit its final report to the Governor no later than October 1, 2001.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 20th DAY
OF JUNE, 2001.**

**JIM HODGES
GOVERNOR**

No. 2001-14

WHEREAS, the undersigned has been informed that Greenville County Auditor George W. Hendrix died on May 10, 2001; and

WHEREAS, the undersigned is authorized to appoint a County Auditor in the event of a vacancy pursuant to the Code of Laws of South Carolina (1976), as amended, Sections 4-9-60 and 4-11-20; and

WHEREAS, Mary M. Strom of 120 Macs Road, Piedmont, SC, 29673 is a fit and proper person to serve as the Auditor of Greenville County.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and statutes of this State, I hereby appoint Mary M. Strom as Auditor of Greenville County to fill the unexpired term of George W. Hendrix, until the next general election and until her successor shall qualify.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 13th DAY
OF JUNE, 2001.**

**JIM HODGES
GOVERNOR**

No. 2001-15

WHEREAS, in its 2001 regular session, the General Assembly of the State of South Carolina failed to pass a General Appropriations Act to provide for the continued operation of state government for the 2001-2002 fiscal year; and

WHEREAS, the citizens of the State of South Carolina depend on the continued operation of state government for education, health care, public safety and other important governmental services; and

WHEREAS, the absence of a budget for the upcoming fiscal year is a matter requiring immediate action; and

WHEREAS, Article IV, Section 19 of the South Carolina Constitution states in pertinent part that: "The Governor may on extraordinary occasions convene the General Assembly in extra session[;]" and

4 EXECUTIVE ORDERS

WHEREAS, being mindful of the duties and responsibilities placed on me by the Constitution and laws of this State, and in determining that there exists an extraordinary occasion requiring me to convene the General Assembly in extra session prior to the next regular session of the General Assembly.

NOW, THEREFORE, pursuant to the powers conferred upon me by the Constitution and Statutes of the State of South Carolina, and by the power vested in me by Article IV, Section 19 of the Constitution of the State of South Carolina, I hereby call an extra session of the General Assembly of South Carolina to convene at the State House in Columbia on Wednesday, June 20, 2001, at noon.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 19th DAY
OF JUNE, 2001.**

**JIM HODGES
GOVERNOR**

No. 2001-16

WHEREAS, the Bamberg County Board of Registration and Election Commission has determined that in the election held on April 10, 2001, for Denmark-Olar School Board District 2, Seat 1, warrants holding a new election for that office; and

WHEREAS, the Bamberg County Board of Registration and Election Commission, competent authority, declared the election void; and

WHEREAS, the Bamberg County Board of Registration and Election Commission has requested a new election pursuant to Section 7-13-1170 of the South Carolina Code of Laws.

WHEREAS, Section 7-13-1170 of the South Carolina Code of Laws provides “. . . if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result.”

NOW THEREFORE, pursuant to the authority vested in me by the Constitution and statutes of the State of South Carolina, I hereby:

- a. Order that an election for the Denmark-Olar School Board District 2, Seat 1 on August 14, 2001 or at the earliest possible date and time as is permitted by the United States Department of Justice; and

- b. Designate the Bamberg County Board of Registration and Election Commission to perform the necessary official duties pertaining to the election and to declare the result.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 28th DAY
OF JUNE, 2001.**

**JIM HODGES
GOVERNOR**

No. 2001-17

WHEREAS, a federal grand jury indicted Vander Moore Gore, Jr. on June 20, 2001 for allegedly conspiring to distribute and possess with the intent to distribute controlled substances in violation of Title 21, United States Code, Sections 841(a)(1) and 846; and

WHEREAS, conspiring to distribute and possess with the intent to distribute controlled substances is a crime of moral turpitude; and

WHEREAS, Mr. Gore is a Town Councilman of Atlantic Beach, South Carolina, and, consequently, is an officer of the State or its political subdivisions; and

WHEREAS, Article VI, Section 8, of the South Carolina Constitution provides that “[a]ny officer of the State or its political subdivisions . . . who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted.”

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and statutes of the State of South Carolina, I hereby suspend Vander Moore Gore, Jr. as Town Councilman of Atlantic Beach.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 11th DAY
OF JULY, 2001.**

**JIM HODGES
GOVERNOR**

6 NOTICES

BOARD OF EDUCATION

ERRATA

43-237.1. Adult Education Program

The amendment of R.43-237.1 published in the *State Register*, Volume 25, Issue 4 (April 27, 2001), is being reprinted as final in the July 27, 2001, *State Register*, to reflect the correct version of R. 43-237.1 that was approved by the State Board of Education on April 10, 2001.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication July 27, 2001, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 737-7200.

Affecting Aiken County

Replacement of existing fixed Computerized Tomography (CT) System with a new unit.

Aiken Regional Medical Centers

Aiken, South Carolina

Project Cost: \$1,073,227

Affecting Anderson County

Establish an outpatient narcotic treatment program.

Southwest Carolina Treatment Center

Anderson, South Carolina

Project Cost: \$53,570

Affecting Charleston County

Purchase and installation of a 1.5 Tesla Magnetic Resonance Imaging (MRI) Scanner at 2851 Tricom Street.

Tricom Diagnostic Imaging, LLC

North Charleston, South Carolina

Project Cost: 1,800,611

Conversion of twenty (20) Psychiatric beds to twenty (20) acute care beds for a total of 271 acute care beds and twenty-five (25) nursing home beds.

Trident Medical Center

Charleston, South Carolina

Project Cost: \$2,681,640

Affecting Colleton County

Major renovation and expansion of the hospital to include: renovation and expansion of the labor and delivery unit, the emergency department, imaging services, the surgery department, and renovations to the cardiopulmonary and respiratory treatment areas, with no change in the current licensed bed capacity.

Colleton Medical Center
Walterboro, South Carolina
Project cost: \$10,615,560

Affecting Georgetown County

Construction of a 24 bed nursing home with the following complement: seventeen (17) community nursing home beds which will not participate in the Medicaid (Title XIX) Program, and seven (7) institutional nursing home beds, which do not provide a community service.

The Lakes at Litchfield Skilled Nursing Center
Pawleys Island, South Carolina
Project Cost: 1,500,000

Affecting Greenville County

Construct a bed tower addition for 100 acute care beds by adding 55 new beds, converting 9 psychiatric AD & FEE beds to acute care and moving 36 beds for a total of 710 acute care, 63 psychiatric, 53 rehabilitation, and 48 nursing home beds.

Greenville Memorial Hospital
Greenville, South Carolina
Project Cost: \$16,264,000

Establishment of a comprehensive breast imaging center with six mammography units in the Eastside Ambulatory Care Center.

Greenville Hospital System
Greenville, South Carolina
Project Cost: \$1,555,500

Affecting Jasper County

Construction of a 31 bed acute care replacement hospital and the addition of 10 comprehensive rehabilitation beds.

Jasper County Hospital
Hardeeville, South Carolina
Project Cost: \$32,659,000

Affecting Laurens County

Construction of a three story outpatient addition and renovation of the emergency area and operating suites.

Laurens County Health Care System
Clinton, South Carolina
Project Cost: \$9,763,459

8 NOTICES

Affecting Lexington County

Construction of a 44 bed nursing home which will not participate in the Medicaid (Title XIX) Program.

Agape Nursing and Rehabilitation

West Columbia, South Carolina

Project Cost: \$1,805,390

Affecting Lexington County

Replacement/upgrade of a Computed Tomographic (CT Scanner for a total of 3 CT Scanners at the main hospital.

Lexington Medical Center

West Columbia, South Carolina

Project Cost: \$1,145,594

Affecting Richland County

Construction of an ambulatory surgery Center with five (5) endoscopy rooms restricted to gastroenterology procedures only.

South Carolina Endoscopy Center – Northeast

Columbia, South Carolina

Projected Cost: \$4,276,856

Affecting Spartanburg County

Minor renovation of the Imaging Department for the addition of a third Computerized Tomography (CT) Scanner.

Spartanburg Regional Medical Center

Spartanburg, South Carolina

Project Cost: \$1,370,275

Addition of a 1.5 Tesla fixed Magnetic Resonance Imaging (MRI) unit for a total of two MRI units.

Mary Black Memorial Hospital

Spartanburg, South Carolina

Project Cost: \$2,474,746

Establish an outpatient narcotic treatment program.

Spartanburg Treatment Associates, Inc.

Spartanburg, South Carolina

Project Cost: \$101,250

Affecting Sumter County

Expansion of the existing home health agency to serve Sumter County.

CarePro Home Health-Sumter County

Columbia, South Carolina

Project Cost: \$1,000

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning July 27, 2001. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 737-7200.

Affecting Aiken County

Replacement of the existing fixed Computerized Tomography (CT) System with a new unit.
Aiken Regional Medical Centers
Aiken, South Carolina
Project Cost: \$1,073,227

Affecting Beaufort County

Establishment of separately licensed office for the existing licensed agency to serve Beaufort and Jasper Counties in order to meet HCFA requirements.
Winyah Home Health Care of the Low Country, LLC
Hilton Head, South Carolina
Project Cost: \$3,000

Establishment and development of a new fixed diagnostic cardiac catheterization laboratory.
Beaufort Memorial Hospital
Beaufort, South Carolina
Project Cost: \$2,566,721

Affecting Charleston County

Addition of eight (8) Non-Medicaid nursing home beds for a total of sixty-one (61) community beds and nine (9) institutional nursing home beds for a total of seventy (70) nursing home beds.
Bishop Gadsden Episcopal Health Care Center
Charleston, South Carolina
Project Cost \$345,400.00

Construction and relocation of Roper West Ashley Surgery Center, consisting of four (4) operating rooms, to the East Cooper area
Lowcountry Surgery Center, LLC
Charleston, South Carolina
Project Cost: \$5,557,386

Renovations and construction to add 57,000 square feet for outpatient radiation oncology, mammography screening, administrative offices and education and meeting facilities.
Hollings Cancer Center (MUSC)
Charleston, South Carolina
Project Cost: \$28,758,960

Purchase of a 3.0 Tesla Magnetic Resonance Imaging (MRI) for diagnostics and research for a total of three MRI units.
Medical University of South Carolina Hospital Authority
Charleston, South Carolina
Project Cost: \$5,491,752

10 NOTICES

Affecting Florence County

Expansion and relocation of the existing ambulatory surgery center for a total of five (5) operating rooms and one (1) cystoscopy suite.

McLeod Ambulatory Surgery Center

Florence, South Carolina

Project Cost: \$ 6,146,519

Affecting Florence County

Construction and development of a free-standing ambulatory surgery center with four (4) operating rooms, two (2) endoscopy suites and pre- and post-operative areas for multi-specialty surgical and endoscopic procedures.

Physicians Surgical Center of Florence

Florence, South Carolina

Project Cost: \$ 7,119,360

Affecting Greenville County

Conversion of ten (10) institutional nursing home beds to community nursing home beds, which will not participate in the Medicaid (Title XIX) Program, for a total of thirty-four (34) institutional nursing home beds which do not provide a community service and ten (10) community nursing home beds.

Rolling Green Village

Greenville, South Carolina

Project Cost: -0-

Establishment of a comprehensive breast imaging center with six mammography units in the Eastside Ambulatory Care Center.

Greenville Hospital System

Greenville, South Carolina

Project Cost: \$1,555,500

Affecting Jasper County

Establishment of separately licensed office for the existing licensed agency to serve Beaufort and Jasper Counties in order to meet the HCFA requirements.

Winyah Home Health Care of the Low Country, LLC

Hilton Head, South Carolina

Project Cost: \$3,000

Affecting Lexington County

Replacement/upgrade of a Computed Tomographic (CT) Scanner for a total of 3 CT Scanners at the main hospital.

Lexington Medical Center

West Columbia, South Carolina

Project Cost: \$1,145,594

Affecting Spartanburg County

Construction of a free-standing ambulatory surgery center with two (2) general operating rooms, one (1) urology operating room, and one (1) endoscopy suite.

The Greer Surgery Center
Greer, South Carolina
Project Cost: \$5,811,506

Affecting Spartanburg County

Addition of a 1.5 Tesla fixed Magnetic Resonance Imaging (MRI) unit for a total of two MRI units.

Mary Black Memorial Hospital
Spartanburg, South Carolina
Project Cost: \$2,474,746

Minor renovation of the Imaging Department for the addition of a third Computerized Tomography (CT) Scanner.

Spartanburg Regional Medical Center
Spartanburg, South Carolina
Project Cost: \$1,370,275

PUBLIC NOTICE

A public hearing on three sections of the Draft 2001 South Carolina Health Plan will be held on Tuesday, August 14, 2001 from 11:00 a.m. until 12:00 noon, in the second floor conference room of the Heritage Building, 1777 St. Julian Place, Columbia, South Carolina. The general topics pertain to: (1) Converting nursing home beds in hospitals to acute care hospital beds; (2) PET scanners; and (3) Mobile Cardiac Catheterization Labs.

1. General Hospital Bed Calculations. Page II-8, paragraph (f) 1.

“Hospitals that have nursing home beds may be allowed to convert these nursing home beds to acute care beds regardless of the projected need for general acute care hospital beds, provided a Certificate of Need is received.”

2. PET Scanners. Page II-89-90.

Under Certificate of Need Standards, change (1) to: “Initially each of the four planning regions in the State should have no more than two fixed PET scanners geographically dispersed provided they can document the need for a scanner.”

Change (4) on page II-90 to: “A third PET scanner in each region shall only be approved if it is demonstrated that each existing PET service is performing an average of 5 scans per working day which equates to 1,250 clinical procedures (5 clinical procedures/day x 250 working days) per PET unit per year.”

3. Mobile Cardiac Catheterization Labs. Page II-54.

Under the Certificate of Need Standards, paragraph (1) add: “In order to approve a Certificate of Need application for a mobile diagnostic cardiac catheterization laboratory, the applicant must be able to project a minimum of 100 diagnostic equivalents annually by the end of the second year following initiation of the service without reducing the utilization of the existing diagnostic catheterization services in the service area below 80% of capacity.”

Comments on these topics may be presented at the public hearing or submitted in writing to Albert Whiteside, Division of Planning and Certification of Need, S.C. Department of Health and Environmental Control, 2600 Bull St., Columbia, SC 29201 through August 15, 2001. For additional information, call (803) 737-7200.

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The staff will review the comments and provide a recommendation to the Board of Health and Environmental Control on each of these topics to be included in the 2001 South Carolina Health Plan.

PUBLIC NOTICE

The Bureau of Health Facilities and Services Development, S.C. Department of Health and Environmental Control will conduct a public hearing regarding two Certificate of Need applications for MRI units in the Charleston area. One application submitted by Bon Secours St. Francis Xavier Hospital in Charleston, SC is for a fixed MRI to replace a leased mobile MRI. The second application submitted by Trident Medical Center in Charleston, SC is for the purchase of an open MRI unit for the Medical Arts Building.

The public hearing will be held on Wednesday, August 8, 2001 at 10:30 a.m. in the auditorium of the Otranto Road Library, 2261 Otranto Road, North Charleston, South Carolina.

The public is invited to attend, and an opportunity shall be provided for any person to present information. No decision will be made at the hearing, but the Department shall make a decision within 60 days from the date of the public hearing.

Comments on these proposals are hereby solicited and may be presented at the public hearing or in writing until 5:00 p.m. on August 8, 2001, to Mr. Joel Grice, Director, Bureau of Health Facilities and Services Development, S.C. Department of Health and Environmental Control, 2600 Bull St., Columbia, SC 29201.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act. Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and individuals listed below, please submit your comments in writing, no later than August 27, 2001 to:

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

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

Class I

AMEC Earth & Environmental, Inc
Sub-Surface Waste Management, Inc

Class II

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-18-300, 59-18-310 & 59-18-320 (Supp. 2000)

Notice of Drafting:

The Department of Education proposes to draft a revised policy that addresses the end-of-course examinations which are required by the South Carolina Education Accountability Act of 1998. Interested persons may submit comments to Dr. Theresa G. Siskind, Office of Assessment, State Department of Education, 607 Rutledge Building, 1429 Senate, Columbia, SC 29201. To be considered comments must be received no later than August 27, 2001, the close of the drafting comment period.

Synopsis:

The proposed regulation is necessary to clarify language in the Education Accountability Act of 1998 (EAA) calling for “benchmark” and “gateway” courses. S.C. Code Ann. Section 59-18-300 requires the State Board of Education (SBE) to “adopt specific academic standards for benchmark courses in mathematics, English/language arts, social studies, and science.” S.C. Code Ann. (Supp. 2000) Section 59-18-310 refers to the tests as “end-of-course tests for gateway courses in English/language arts, mathematics, science, and social studies for grades nine through twelve.” One purpose of the proposed regulation is to define “benchmark” and “gateway” in terms of specific courses. Additionally, the proposed policy will define the purpose and uses of the tests.

STATE BOARD OF EDUCATION
CHAPTER 43
1976 Code Section 59-5-60

Notice of Drafting:

The South Carolina State Board of Education proposes to draft amendments to State Board of Education regulations (1) 43-234, Defined Program, Grades 9-12; (2) 43-240, Summer Programs; (3) 43-302, School Incentive Reward Program; and (4) 43-303, Flexibility through Deregulation Program. Interested persons may submit comments to Dr. Leonard McIntyre, Deputy Superintendent, Division of Professional Development and School Quality, South Carolina Department of Education, 1429 Senate Street, Room 1102, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 PM, August 27, 2001, the close of the drafting period.

Synopsis:

The South Carolina Education Accountability Act No. 400 of 1998 requires the State Department of Education to promulgate regulations for the Palmetto Gold and Silver Program and the Flexibility Through Deregulation Program. In addition, the regulations listed above require alignment of several existing educational programs and their relevant regulations with the Act.

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60(1)(1990) and 59-26-10, et al. (Supp. 2000)

Notice of Drafting:

The State Department of Education proposes to draft substantial revisions and additional regulations governing Teacher Certification, Teacher Education Program Approval, and Teacher Evaluation. Interested persons may

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submit their comments in writing to Dr. Sandra G. Rowe, Director, Office of Teacher Certification, 1600 Gervais Street, Columbia, South Carolina 29201. To be considered, all comments must be received not later than 5:00 p.m. on August 27, 2001, the close of the drafting comment period.

Synopsis:

The development of South Carolina Curriculum Standards; the direction of National Standards for Teacher Education; development of INTASC standards for initial teacher certification; enactment of the South Carolina Accountability Act; report from the Governor's Commission on Teacher Quality; and the work-related task forces create the need for restructuring the state system for training, certifying and evaluating teachers.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-1-445, 59-30-10 (i) & 59-1-447

Notice of Drafting:

The Department of Education proposes to draft a revised policy that addresses test security. Interested person may submit comments to Dr Theresa G. Siskind, Office of Assessment, State Department of Education, 607 Rutledge Building, 1429 Senate, Columbia, SC 29201. To be considered comments must be received no later than August 27, 2001, the close of the drafting comment period.

Synopsis:

State Board of Education Regulation 43-100, Test Security, became effective in April 1987. The proposed revisions to the regulation will insure that test security provisions apply to currently administered assessments.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control (Department) is proposing to amend R.61-62, *Air Pollution Control Regulations and Standards* and the South Carolina State Implementation Plan. Interested persons are invited to present their views in writing to Heather Preston, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by Monday, August 27, 2001, the close of the drafting comment period.

Synopsis:

On July 18, 1997, the United States Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standard for ground-level ozone from 0.12 ppm averaged over 1 hour to 0.08ppm averaged over 8-hours. This new standard is commonly referred to as the 8-hour ozone standard. While all areas of South Carolina are currently "in attainment" for the old standard, when implemented, the 8-hour ozone standard could result in numerous areas of the state being designated as "nonattainment" for ground-level ozone. When the nonattainment designation occurs, the state must submit a plan to EPA that demonstrates how the state will bring those areas designated as nonattainment for the standard back into attainment.

It is not clear yet when EPA will make the 8-hour designations, but in an effort to be proactive, the Department would like to begin the process with industry, environmental groups, and other interested parties to consider possible ozone reduction strategies. The Department proposes to focus on control strategies for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs), which are precursors to ground-level ozone pollution.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 48-2-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R. 61-30, Environmental Protection Fees. Interested persons should submit their views in writing to Michael E. Rowe, Office of Environmental Quality Control, and S.C. Dept. Of Health and Environmental Control, 2600 Bull Street, Columbia, S.C., 29201. To be considered, comments should be received no later than August 31, 2001, the close of the initial drafting comment period.

Synopsis:

The Department of Health and Environmental Control proposes to amend R. 61-30, Environmental Protection Fees, as follows:

(1) NPDES and No-Discharge Permit Annual Fees [(G)(1)(a)(I) - (iii)] - These fees are charged annually to all NPDES and No-Discharge permit holders and have been in place since 1992. There are no application fees for these permits. These fees are designed to cover a portion of the costs of maintaining the permit records, receiving and processing the required reports, and reissuing the permit every five years. The fee amount is calculated based on the previous year's actual flow. The fee amounts have not changed since their inception. In recent years, the costs of reviewing, issuing and maintaining these permits have increased. More sophisticated models have to be used to generate wasteload allocations. More of the permits being issued have to have complex limits in order to maintain water quality or to restore waters of the state to meet water quality standards. The Department proposes to raise the fees to maintain existing staff and present turnaround times for issuing permits and general program activities. No additional staff will be hired as a result of this increase.

(2) Drinking Water Annual Fees [(G)(2)] - These fees are charged annually to all public water systems and have been in place since 1993. These fees are designed to cover a portion of the costs of operating the public water system supervision (PWSS) program delegated by US EPA to SC DHEC and to allow the Department to conduct the quarterly and annual compliance monitoring required by the Safe Drinking Water Act. For many years the drinking water fund maintained a reasonable balance at the end of each fiscal year. In order for the fund not to accumulate too much money, the fee schedule has been adjusted down three times since its inception. The recent promulgation of a new round of unregulated contaminant monitoring established new contaminants, and therefore new laboratory methods had to be developed or new contracts with private, commercial labs had to be established. The promulgation of the disinfectant and disinfection by-product rule, and the radio nuclide rule have also established new contaminants and laboratory methods, greatly increasing the cost of operating the monitoring program. The Department proposes to raise the fees to maintain existing staff and the present level of services to the public water systems. No additional staff will be hired as a result of this increase.

(3) Water Quality Certification Application Fees [(G)(1)(b)] - These are application fees for 401 Water Quality Certifications and have been in place since 1992. These fees are designed to cover a portion of the costs of processing the applications, conducting field visits and maintaining the certification records. The fee amount is calculated based on the average amount of staff time required to process an application. The fee amounts have not changed since their inception. In recent years, the costs of reviewing, issuing and maintaining these certifications have increased. Many of the certifications involve impacts to or adjacent to impaired waters and almost all now require review of mitigation plans. The Department proposes to raise the fees to maintain existing staff and present

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turnaround times for issuing certifications and general program activities. No additional staff will be hired as a result of this increase.

(4) Agricultural Annual Operating Fees [(G)(1)(a)(iv) 1 & 2]. These fees are charged annually to all agricultural permit holders and have been in place since 1998. These fees are designed to cover a portion of the costs of maintaining the permit records, receiving and processing the required reports, and reissuing the large swine permits every seven years. The fee amounts have not changed since their adoption in 1998. In recent years, the costs of reviewing, issuing and maintaining these permits have increased. The Department proposes to raise the annual operating fees for agricultural facilities and to add a category for the larger swine facilities with an appropriate fee. This is necessary to maintain existing staff and present turnaround times for issuing permits and general program activities. No additional staff will be hired as a result of the increased fees.

(5) Agricultural Waste Management Plan Application [(G)(1)(d)(i) & (ii)] -These are application fees for new or expanding agricultural facilities. These fees are designed to cover a portion of the costs of maintaining and permitting these. The fee amounts have not changed since their adoption in 1998. In recent years, the costs of reviewing, issuing, and maintaining these permits have increased. Also, a significant number of applications are received that do not have application fees. These types of applications include upgrades and additions to agricultural facilities, which are not expansions. The Department proposes to raise the fees for new and expanding facilities and to add more categories of agricultural applications (e.g., upgrades and additions) for which application fees will be applicable. This is necessary to maintain existing staff and present turnaround times for issuing permits. No additional staff will be hired as a result of the increased and new fees.

(6) Drinking Water Permit Application Fees [new] - These fees would be designed to cover a portion of the costs to receive and review applications for construction permits for drinking water facilities, to render permit decisions, and to issue final operating approvals following construction. Presently there is no fee for this service. The Department proposes to charge a nominal fee based on the size and complexity of the construction project. These fees are necessary to maintain existing staff and present turnaround times for issuing permits and operating approvals. No additional staff will be hired as a result of this new fee.

(7) NPDES Industrial Storm Water and Construction NPDES Storm Water Permit Fees [(G)(1)(a)(iii) & (c)(v)] - Presently NPDES permit coverage is required for land disturbing activities on sites of 5 acres or more and will be required on sites of one acre or more in the near future. These fees are designed to cover only a portion of the costs of reviewing best management plans and general permit coverage. Additional staff is needed to provide a greater field presence to inspect construction sites and industrial sites covered under the NPDES Storm Water program. The Department proposes to raise the fees in these two categories in order to hire additional field staff for compliance determinations.

(8) No Exposure Certification for exclusion from NPDES Storm Water Permitting. Add a new section [(G)(1)(e)]. The Department is proposing to add a new fee, which will be submitted to the Department with the new NPDES Storm Water form on “No Exposure Certification for exclusion from NPDES Storm Water Permitting.” Under the Phase I Storm Water regulations, owners of facilities that were defined as “associated with industrial activity” and that were eligible for the “no exposure” exemption from the NPDES Storm Water Program were not required to submit anything to the Department to qualify for the exemption. This process was self-determination with no oversight by the Department on the program exemption. Now, under the federal Phase II Storm Water Regulations which the Department has adopted with an effective date of July 27, 2001, all facilities classified as associated with industrial activity, except construction, are now eligible to be exempted from the NPDES Storm Water Program if they submit the “No Exposure Certification for exclusion from NPDES Storm Water Permitting” form to the Department. The Department now has oversight of these self-determinations. This fee is designed to cover a portion of the costs of administratively processing the new forms and providing oversight of the no exposure exemption. Additional staff may be hired as a result of this new fee.

(9) Commercial Fixed Nuclear Facility Fee: The Bureau of Land and Waste Management in conjunction with the Bureau of Environmental Services is proposing a fee to cover the costs and effort of the Commercial Fixed Nuclear

Facilities (FNF) program for FY03. The FNF program is needed in order to protect the health and the environment from radiological contamination and exposure from nuclear power production facilities.

Funding for the sample collection and analysis of milk, vegetation, soil, sediment, surface water, air filters, fish and thermoluminescent dosimeters (TLD's) was discontinued by the Nuclear Regulatory Commission (NRC) in FY98. As such, most state oversight monitoring of FNF's has been drastically reduced and is not currently protective of public health or the environment. In addition to supporting the sample collection and analysis of radiological samples around each commercial nuclear power plant, the fee will also support the Nuclear Emergency Response Section for technical guidance and physical response to radiological emergencies and drills for FNF's.

(10) Research, Development and Demonstration Permit Criteria (R. 61-107.10)

Propose increasing review time allotment from 90 to **120 days**. R, D & D applications are the least structured and defined proposals of all solid waste applications simply by nature of the project. It is an experiment, and, consequently, unlike other applications, more time is required to determine exactly what is proposed. Not until this is defined and understood can the actual review procedures commence.

(11) Solid Waste Processing Facilities (R. 61-107.6) Propose increasing review time from 90 to **180 days**. Processing reviews have historically required more time than available through the regulations because of the depth of review of the project in most cases. Facility Engineering has nearly reached the end of the allotted review time frequently, and there is clearly a need for additional review time.

(12) Yard Trash and Land-Clearing Debris; and Compost (R. 61-107.4) Propose Increasing review time allotment from 30 to **90 days**. Composting review time allowance is the shortest of all regulations. Currently, with such a small time frame, only a cursory review of proposal and minimal communication with the applicant can take place before time expires. Time is also required for others to review Financial Assurance proposals. Now, with the change in review procedure to even a more in-depth review for grinding and other handling procedures and the new procedure for determining Financial Assurance, the current time allowance is insufficient.

(13) Construction, Demolition and Land-Clearing Debris Landfills (R.61-107.11)

Propose increasing review time allotment from 120 to **180 days**. There is simply insufficient time to adequately address the multitude of data in a C&D application package effectively. One time consumer is the fact that C&D landfill applications are more numerous than others and some can be in backlog, and thus "on the clock" while one is being reviewed. Additionally, history has shown us that application quality is not generally as good as MSW application quality is, consequently more communication to resolve issues is needed which, of course, requires more time. This contributes to the need for extra time to review.

Legislative review is required for this amendment.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Section 44-93-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control is proposing to amend R.61-105, Infectious Waste Management. Interested persons may submit their views by writing to Mr. Phillip Morris, Program Manager, Infectious Waste Program, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments must be received no later than 5:00 p.m. August 27, 2001, on the close of the drafting comment period.

Synopsis:

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With this Notice of Drafting, the Department is proposing to revise R. 61-105 by deleting Section DD under the Fees Section that states generators and transporters must pay a \$25.00 processing fee. On February 23, 2001, the Environmental Protection Fees, R.61-30 became effective requiring new Infectious Waste generator and transporter fees. Also, the regulation will be, but not limited to, revised to reflect changes in generator and transporter manifest requirements, labeling requirements, and generator registration requirements.

The proposed amendment will require legislature review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 44-1-180

Notice of Drafting:

The Department of Health and Environmental Control proposes to revise Regulation 61-37, Retail Food Establishment Inspection fees. Interested persons may submit comments to Mr. H. Michael Longshore, Bureau of Environmental Health, S. C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on August 31, 2001, the close of the drafting comment period.

Synopsis:

This regulation sets inspection fees and penalties for retail food establishments.

Inspection fees for retail food establishments were established in the mid-1980's to augment appropriated funds for Environmental Health. Effective June 23, 2000, these fees were implemented through R.61-37 and taken out of an annual proviso to the state budget. R.61-37 increased fees to their current level and established a tiered structure for fees based on gross food sales. Since implementing this regulation, the structure of the fees and the late penalties associated with them have created some accounting difficulties in accurately recording fee payments. To alleviate these accounting difficulties, the structure of the late penalties is being changed from \$30.00 increments to \$25.00 increments. This will allow the Department to accurately record late fee payments and regular fee payments; the regulated community will further reap benefits of this action by having late fees reduced by \$5.00 per fee. Pursuant to Act 419 of 1998, Part IB, Section 72.51, and the Administrative Procedures Act, public notification of this revised regulation and fee reduction will be published.

Legislative review of this proposal will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Section 44-1-140, 48-1-30,
and 44-87-10 *et seq.*

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R. 61-86.1, *Standards of Performance for Asbestos Projects*, to incorporate new fees for asbestos abatement projects and licenses. Interested persons are invited to present their views in writing to Dennis Camit; Division of Air Planning, Development and Outreach; Bureau of Air Quality; 2600 Bull Street; Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on August 27, 2001, the close of the drafting period.

Synopsis:

The Department proposes to amend R. 61-86.1, *Standards of Performance for Asbestos Projects*, to add new fees for other special asbestos project categories. This proposed amendment is necessary to help provide adequate funding for the asbestos program. The fee schedule for asbestos abatement projects and licenses has not been updated since established in 1988. South Carolina's fee schedule will be expanded in some areas, taking into account current fees assessed by other Southeastern states. The Department is proposing to add new fees for audits of training entities that administer required courses to asbestos abatement personnel; and, for certification of demolition activities.

The proposed amendment to R. 61-86.1, *Standards of Performance for Asbestos Projects*, will require legislative review.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
STATE BOARD OF DENTISTRY**

CHAPTER 39

Statutory Authority: 1976 Code Sections 40-15-40; 40-15-80; 40-15-85

Notice of Drafting:

The State Board of Dentistry is drafting a regulation requiring the authorization of procedures performed by a dental hygienist under general supervision of a licensed dentist or a South Carolina Department of Health and Environmental Control's public health dentist. Interested persons should submit their views in writing to Randy Bryant, Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211-1329.

Synopsis:

The State Board of Dentistry has determined the need for a regulation addressing the requirement for a valid authorization to be issued by a supervising dentist in order for a dental hygienist to provide services under general supervision.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS**

CHAPTER 81

Statutory Authority: 1976 Code Sections 40-47-20; 40-1-70

Notice of Drafting:

The Board of Medical Examiners is drafting a regulation to amend current Regulation 81-70 so as to provide for the issuance of a limited license for training to applicants who have completed a Fifth Pathway program. The amendment also would delete reference to a FMGEMS certificate, which no longer is available. Interested persons should submit their views in writing to Mr. John D. Volmer, Administrator, Board of Medical Examiners, Department of Labor, Licensing and Regulation, Post Office Box 11289, Columbia, South Carolina 29211-1289.

Synopsis:

The State Board of Medical Examiners has determined the need to make consistent its requirements for a permanent license and a limited license as they relate to applicants trained in other countries who can document successful completion of a Fifth Pathway program. References to a FMGEMS certificate, which no longer is available, would be deleted.

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PUBLIC SERVICE COMMISSION CHAPTER 103

Statutory Authority: 1976 Code Sections 58-3-140, as amended, and 58-5-210

Notice of Drafting:

The Public Service Commission proposes to amend 26 S.C. Code Ann. Regs. 103-512.3.1 and 103-712.3.1 (Supp. 2000) regarding the amount of bond that water and wastewater utilities must file with the Public Service Commission. Interested persons may submit written comments to Mr. Gary E. Walsh, Executive Director, Public Service Commission of South Carolina, P.O. Drawer 11649, Columbia, South Carolina 29211. To be considered, written comments must be received no later than 4:45 p.m. on August 30, 2001, the close of the drafting comment period. Please refer to Docket Number 2001-298-W/S in written comments forwarded to the Commission.

Synopsis:

On June 1, 1999, S.C. Code Ann. Section 58-5-720 (Supp. 2000) was amended by the South Carolina General Assembly. This amendment requires any water or sewer utility regulated by the Public Service Commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, to file with the Commission a bond with sufficient surety or certificates of deposit in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the Commission. The Commission is in the process of amending 26 S.C. Code Ann. Regs. 103-512.3.1 and 103-712.3.1 (Supp. 2000) so that the amount of the bond in these regulations will be consistent with S.C. Code Ann. Section 58-5-720 (Supp. 2000).

Legislative review of this proposed regulation is required.

DEPARTMENT OF REVENUE CHAPTER 117

Statutory Authority: 1976 Code Sections 12-4-320 and 61-6-60

Notice of Drafting:

The South Carolina Department of Revenue is considering amending various alcoholic beverage regulations to change references to the former Alcoholic Beverage Commission to the Department of Revenue or the State Law Enforcement Division and to correct references to various code sections that have been changed due to recodification of the alcoholic beverage laws in Title 61. The department is also proposing to delete some outdated provisions of some regulations and repeal other outdated regulations completely.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on September 4, 2001.

Synopsis:

The South Carolina Department of Revenue is considering amending various alcoholic beverage regulations to change references to the former Alcoholic Beverage Commission to the Department of Revenue or the State Law Enforcement Division and to correct references to various code sections that have been changed due to recodification of the alcoholic beverage laws in Title 61. The department is also proposing to delete some outdated provisions of some regulations and repeal other outdated regulations completely.

DEPARTMENT OF REVENUE
CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering repealing Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) and creating thirty-seven new regulations concerning sales and use tax in a new Article 11. Under the proposal, sales and use tax regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning agriculture can be found in one regulation under Regulation 117-301. This regulation has several “subsections” numbered 117-301.1, 117-301.2, and so on. The project reduces the number of regulations from 225 to 37. This proposal organizes and numbers the regulations as follows:

<u>Regulation Number</u>	<u>Subject</u>
117-300	Retail Licenses
117-301	Agriculture
117-302	Manufacturers, Processors, Compounders, Etc.
117-303	Laundries
117-304	State and Local Government
117-305	Meals
117-306	Repairs
117-307	Hotels, Motels and Similar Facilities
117-308	Services
117-309	Retailers
117-310	Freight and Delivery Charges
117-311	Railroads
117-312	Containers and Other Packaging Material
117-313	Labor
117-314	Construction
117-315	Newspaper
117-316	Books
117-317	Repossessed Property
117-318	Gross Proceeds of Sales and Sales Price
117-319	Warehousemen
117-320	Use Tax
117-321	Ships
117-322	Casual and Isolated Sales
117-323	Residential Heating
117-324	Dual Business
117-325	Bulk Sales
117-326	Saving and Loan Associations
117-327	Leased Departments
117-328	Radio and TV Stations
117-329	Communications
117-330	Automatic Data Processing
117-331	Airport Fixed Based Operators
117-332	Medicine and Prosthetic Devices
117-333	Donors and Goods Given Away for Advertising Purposes

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117-334	Interstate Commerce
117-335	Manufactured and Modular Homes
117-336	Definition of a Facility

The proposal also incorporates longstanding department policy with respect to building material used in the construction of commercial housing for poultry and livestock, meals sold to or by medical institutions, colleges and universities, charges by hotels and similar facilities, transactions involving state and local governments, and the calculation of the tax when a manufactured home is sold with furniture, appliances and other items. Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on August 29, 2001.

Synopsis:

This proposal repeals Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) and creates thirty-seven new regulations concerning sales and use tax in a new Article 11. Under the proposal, sales and use tax regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. The project reduces the number of regulations from 225 to 37. The proposal also incorporates longstanding department policy with respect to building material used in the construction of commercial housing for poultry and livestock, meals sold to or by medical institutions, colleges and universities, charges by hotels and similar facilities, transactions involving state and local governments, and the calculation of the tax when a manufactured home is sold with furniture, appliance and other items.

Document No. 2634
DEPARTMENT OF ARCHIVES AND HISTORY
 CHAPTER 12
 Statutory Authority: 1976 Code Section 60-11, Archives Act

12-100 through 12-107. Guidelines for Implementation of Certified Local Government (CLG) Program in South Carolina

Preamble:

The Department of Archives and History proposes to revise the Guidelines for Implementation of Certified Local Government (CLG) Program in South Carolina, Sections 12-100 through 12-107. These revisions are being made to comply with the 1999 revision of the federal regulations governing the CLG program (36 CFR 61) made as a result of 1992 amendments to the National Historic Preservation Act as amended (16 U.S.C. 470 et seq.), and to comply with changes in the National Park Service Historic Preservation Fund Grants Manual. The proposed revisions received approval from the National Park Service, Department of Interior, on October 19, 2000.

The Guidelines for the South Carolina CLG program incorporate the federal requirements for the certification of local historic preservation programs and the state responsibilities for those local programs that are specified in the National Historic Preservation Act as amended. The regulations set forth minimum requirements for local governments to participate in the program; procedures for the Department to certify, monitor, and decertify local governments; procedures to transfer Historic Preservation Fund grants to CLGs; and procedures for CLGs to comment on nominations to the National Register of Historic Places.

The Notice of Drafting for the proposed revisions was published in Volume 24, Issue 12 of the *State Register* on December 22, 2000.

Section-by-Section Discussion

- 12-100 This section provides an overview the CLG program—history, purpose, requirements for participation, and benefits. New text updates the program history to include the 1992 amendments to the National Historic Preservation Act, and clarifies that the Act is the legal basis for the CLG program.
- 12-101 This section outlines the five minimum requirements for local governments to participate in the CLG program. The proposed revisions do not alter the requirements. They clarify definitions, update citations of federal and state law and regulations, and refine procedures based on changes in the federal law and regulations.
- 12-101.A This subsection defines appropriate state or local legislation that a local government must enforce for the designation and protection of historic properties in its jurisdiction. The definition of historic resources now includes pre-historic resources. Protection of historic resources has been expanded to include review of “other changes”, in addition to reviews of proposed alterations, demolitions, relocations, and new construction.
- 12-101.B This subsection defines the minimum requirements for the establishment and conduct of an adequate and qualified historic preservation commission. The role of the governing body to appoint the commission has been clarified and the citation of state enabling law updated to the 1994 Comprehensive Planning Act. The list of preservation-related professions has been revised, and new text added providing more guidance on adequately documenting efforts to find professionals to serve on the commission. The minimum requirement of three meetings yearly

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has been revised to encourage commissions to meet more often if necessary to complete work in a timely fashion. The annual training requirement for CLG commission members and staff has been revised. The conflict of interest statement for commission members now also includes indirect financial interests. The roles of the commission and chief elected local official in the review of nominations to the National Register of Historic Places has been revised to follow federal regulations.

- 12-101.C This subsection defines minimum requirements for the survey and inventory of historic properties. The definition of historic resources has been expanded to include pre-historic resources and clarifies that each CLG may set priorities for surveys.
- 12-101.E Changes “this act” to “the National Historic Preservation Act” to clarify the citation.
- 12-102 This section sets forth procedures for certifying local governments to participate in the CLG program.
- 12-102.A This subsection lists CLG application submission requirements. The revisions clarify requirements for submittals of preservation ordinances and lists of commission members.
- 12-102.B This subsection outlines the CLG application process and timelines. Revisions clarify the role of the Department in processing applications and the role of the National Park Service in granting final certification. New text is being added outlining the process for making substantive changes to certification agreements.
- 12-103 This section outlines the process for monitoring the performance of CLGs and the process of decertifying if performance minimums are not met. Revisions align the process with the federal regulations. The evaluation period has been lengthened from three to four years and evaluation results must be given in writing. New text clarifies the process and time lines for the Department and the National Park Service to decertify a CLG.
- 12-104 This section provides for the transfer of Historic Preservation Fund (HPF) allocations to CLGs. Revisions update references to federal grant manuals and accounting standards.
- 12-104.B New text based on federal regulations has been added outlining how CLGs may use HPF funds for activities outside their jurisdiction, how CLGs may pool HPF grants, and how CLGs may designate HPF grant administration to a third party.
- 12-106 This section describes funding priorities for HPF allocations to CLGs. The stabilization and weatherization of historic buildings has been added to the list of eligible activities.
- 12-107 This subsection outlines how CLGs participate in the process of nominating historic properties within their boundaries to the National Register of Historic Places. New text, based on changes in federal regulations, is being added that allows the Department to delegate National Register functions to CLGs.

Notice of Public Hearing and Opportunity for Public Comment:

The Department of Archives and History will conduct a public hearing on the proposed revisions on September 7, 2001 at 11:00 a.m. at the regularly scheduled meeting of the South Carolina Archives & History Commission. The meeting will be held at the South Carolina Archives & History Center, 8301 Parklane Road, Columbia, S.C. The public is invited to attend and provide comments on the proposed regulations. Submittal of written copies of oral statements is encouraged for the hearing record.

Written comments and inquiries may be directed to Ms. Elizabeth Morton Johnson, Historical Services Division, S.C. Department of Archives and History, 8301 Parklane Road, Columbia, S.C. 29223. Comments must be received no later than 5:00 p.m. on August 27, 2001. Comments received will be considered by staff in formulating the final proposed regulation for the public hearing on September 7, 2001. Comments received by the deadlines will be submitted to the Commission in a summary of public comments and department responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

The Department of Archives and History estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed revised regulations.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 12-100 – 12-107, Guidelines for Implementation of Certified Local Government (CLG) Program In South Carolina.

Purpose: The proposed revisions will bring the State Guidelines for the CLG program into compliance with changes in federal law and regulations governing Certified Local Governments. The regulations set forth in the Guidelines provide for minimum requirements for local governments to participate in the program; procedures for the Department of Archives and History to certify, monitor, and decertify local governments; procedures to transfer Historic Preservation Fund grants to CLGs; and procedures for CLGs to comment on nominations to the National Register of Historic Places.

Legal Authority: The legal authority for Regulations 12-100 – 12-107 is Section 60-11, S. C. Code of Laws (Archives Act).

Plan for Implementation: The proposed revisions are being made to comply with amendments to federal law and changes in federal regulations and therefore do not require legislative approval. The proposed revisions will take effect after publication of the final regulations in the *State Register*. The proposed revisions will be implemented by sending copies to all current CLGs in the state and to the National Park Service.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The National Park Service is requiring each state to review and update its CLG regulations to reflect the 1999 revision of the federal regulations governing the CLG program (36 CFR 61) made as a result of the 1992 amendments to the National Historic Preservation Act as amended (16 U.S.C. 470 et seq.), and to comply with changes in the National Park Service Historic Preservation Fund Grants Manual. The proposed revisions clarify definitions, update citations of federal and state law and regulations, and refine procedures to be consistent with the revisions in the federal regulations and law. The revisions do not alter the minimum requirements for local governments to participate in the program, or the responsibilities of the State to certify, monitor, and decertify local governments, transfer Historic Preservation Fund Grants to CLGs, or include CLGs in the National Register of Historic Places nomination process.

DETERMINATION OF COSTS AND BENEFITS: The State preservation program will remain in good standing with the National Park Service and thus continue to receive annual allocations from the Historic Preservation Fund from the National Park Service. At least ten percent of these funds must be allocated to CLGs.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None.

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DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no detrimental effects on the environment and public health if these changes are not implemented.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2637
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: Section 48-1-60, S.C. Code of Laws, 1976

Preamble:

The Department proposes to amend R. 61-69. The purpose of the amendment is to reclassify the waters of Hunting Island State Park to protect recreational and ecological resources. The waters of Hunting Island are part of a larger ecosystem that reaches from St. Helena Sound to Port Royal Sound, interconnecting saltwater marshes, bays, and inlets. Notwithstanding, the Department proposes to reclassify only those waters inside the park and those immediately surrounding the park to protect its habitat. The Department does not propose to reclassify tidal creeks on privately-owned lands. Specific waterbodies will be reclassified from Class Shellfish Harvesting Waters (SFH) to Class Outstanding Resource Waters (ORW). See the section-by-section discussion below and the statement of need and reasonableness for more detailed information.

Section-by-Section Discussion:

Fripps Inlet (Beaufort County)-The current water use classification is Class SFH. The appropriate water use classification is Class ORW to protect outstanding recreational and ecological resources. Story River, Old House Creek, an unnamed creek (Old Island), an unnamed creek (Fripps Island) will remain appropriately Class SFH.

There are two references to AFripp Inlet≡ in Regulation 61-69 which are inconsistent with the official name on the U.S. Geological Survey Map. The Department plans to amend those references to AFripps Inlet≡ consistent with the map.

Johnson Creek (Beaufort County)- The current water use classification is Class SFH. The appropriate water use classification is Class ORW to protect outstanding recreational and ecological resources.

Harbor River (Beaufort County)- The current water use classification is Class SFH. The appropriate water use classification is Class ORW to protect outstanding recreational and ecological resources. Ward Creek, an unnamed creek on St. Helena Island and tributary to Harbor River, and an unnamed creek on Harbor Island and tributary to St. Helena Sound will remain Class SFH.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public and regulated community to attend a staff-conducted informational forum to be held on September 6, 2001, at 7:00 p.m. at the St. Helena Elementary School Auditorium, U.S. Highway 21 (861 Sea Island Parkway), St. Helena Island, South Carolina. The purpose of the forum is to answer questions, clarify issues, and receive comments from interested persons on the proposed regulation. Comments received shall be considered by staff in formulating the final draft

proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled as noticed below.

Interested persons are also provided an opportunity to submit written comments by mail to the staff forum by writing to M. Rheta Geddings, Director, Division of Water Quality at SC DHEC, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than the close of the staff-informational forum on September 6, 2001. Comments received shall be submitted in a Summary of Public Comments and Department Responses to the Board for public hearing.

Copies of the text of the proposed regulation for public notice and comment may be obtained by contacting M. Rheta Geddings, Director, Division of Water Quality at SC DHEC, 2600 Bull Street, Columbia, SC 29201.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-100 and 1-23-111:

Interested members of the public and regulated community are invited to make oral and written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on November 8, 2001. The public hearing will be held at the Aiken County Health Department, 222 Beaufort Street, N.E., Aiken, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board=s agenda to be published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to three minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to M. Rheta Geddings, Director, Division of Water Quality at SC DHEC, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments submitted other than at the public hearing must be received no later than the close of the staff-informational forum on September 6, 2001. Comments received by the deadline date shall be considered by staff in formulating the final proposed regulation for public hearing on November 8, 2001, as noticed above. Comments received shall be submitted in a Summary of Public Comments and Department Responses to the Board for public hearing.

Copies of the final proposed regulation for public hearing before the DHEC Board may be obtained by contacting M. Rheta Geddings, Director, Division of Water Quality at SC DHEC, 2600 Bull Street, Columbia, SC 29201.

Preliminary Fiscal Impact Statement:

There are no anticipated costs to the State, and this regulation does not require or impose any mandate on local governments.

Statement of Need and Reasonableness:

This Statement was determined by staff analysis pursuant to S.C. Code Section 1-23-115.

DESCRIPTION OF THE REGULATION: Amendment to Regulation 61-69, *Classified Waters*.

Purpose of the Regulation: The purpose of the Regulation is to reclassify the waters of Hunting Island State Park from Class Shellfish Harvesting Waters (SFH) to Class Outstanding Resource Waters (ORW) to protect outstanding recreational and ecological resources.

There are two references to AFripp Inlet≡ in Regulation 61-69 which are inconsistent with the official name shown on the USGS Map. The Department plans to amend those references to A Fripps Inlet≡ consistent with the map.

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The water use classifications in R.61-69 apply to every waterbody in the state, even if it is unnamed in the Regulation. In such cases where a waterbody is unnamed in R.61-69, the water use classification to which it is tributary applies. Johnson Creek, for instance, is unnamed in the Regulation and is tributary to both the Harbor River and the Atlantic Ocean. The waters surrounding Hunting Island, including the Harbor River, the Atlantic Ocean and Fripps Inlet are classified Shellfish Harvesting Waters (SFH) in the Regulation. As an unnamed tributary to Harbor River and the Atlantic Ocean, Johnson Creek also is classified SFH. Therefore, any of the waters of Hunting Island State Park that are unnamed in R.61-69, and are tributary to any of these waterbodies also are classified SFH.

Legal Authority: 1976 S.C. Code of Laws, Section 48-1-60.

Plan for Implementation: Implementation procedures require a public hearing process, approval by the DHEC Board, approval by the General Assembly, and publication in the *State Register*. This regulation will be implemented as are other regulations.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION AND THE EXPECTED BENEFIT: Hunting Island State Park assets include semi-tropical barrier islands, maritime forests, marshlands, and beaches. The Park supports an abundance of wildlife including the Loggerhead Turtle, Alligator, and many wading birds including the federal and state endangered Wood Stork. Each year, 470, 000 people visit the Park to swim, to surf fish, and to boat. The waters provide jobs to commercial fishermen and oystermen.

If implemented, the amendment would prohibit any discharge of wastewaters, untreated or treated, into any waterbody designated ORW or Outstanding Resource Water. There are three existing wastewater treatment facilities in the area: at Harbor Island, at Fripps Island, and at Hunting Island, but they will not be impacted by the Regulation. At Fripps and Harbor, facilities will not be impacted because they do not discharge into any of the waterbodies under consideration for ORW-designation. Both facilities use sprayfields (golf courses) for final waste disposal. The Hunting Island facility will not be impacted by the Regulation because its present form of wastewater treatment and method of final waste disposal will soon be discontinued. The Hunting Island facility will be converted to spray field irrigation for final wastewater disposal.

The waters proposed for ORW-designation will be inside the park=s boundary (Johnson Creek and its tributaries) and surrounding waters: Fripps Inlet and Harbor River.

The waters of Hunting Island State Park now are classified SFH. There is concern by park staff that current water quality standards are not protective enough to ensure the recreational and ecological resources will be protected in the future. The ORW designation will benefit Park visitors, anglers, fishermen, oystermen, property owners, residents of Beaufort County and the state.

DETERMINATION OF COSTS AND BENEFITS: The amendment will protect the outstanding recreational and ecological resources of Hunting Island State Park. Regulation 61-68, *Water Classifications and Standards*, prohibits wastewater treatment plants from discharging effluent to waters designated outstanding recreational and ecological resources. The amendment does not require or impose any mandates on local governments. Shellfish resources will be protected from possible contamination from wastewater discharges. Recreational and ecological resources will benefit.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON THE ENVIRONMENT AND THE PUBLIC HEALTH: The waters of Hunting Island State Park support irreplaceable ecological and recreational resources. Without this regulation, these high quality waters will not be adequately protected.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There were no public health concerns that spurred this regulation. This regulation recognizes outstanding recreational and ecological resources. State park staff were concerned the current water classifications would not protect water quality in the future.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2638
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 Chapter 61
 Statutory Authority: 1976 Code Ann. Section 44-56-30

R.61-79. Hazardous Waste Management Regulations

Preamble: The federal equivalent to R. 61-79 is amended periodically. The State is required to adopt certain federal amendments to maintain authorization by the United States Environmental Protection Agency for the State Hazardous Waste Management Program.

The Department proposes to amend R.61-79 to reflect federal amendments through June 30, 2000. The proposed amendments will address: Final National Emissions Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, sometimes called NESHAPS or MACT (for Maximum Achievable Control Technologies); technical amendments to Land Disposal Restrictions Phase IV (corrections which became effective October 20, 1999); a new rule which allows certain generators of F006 sludges to accumulate up to 180 days without a permit if the sludge is recycled; the vacating of previous listings for organobromine production wastes; and other minor amendments. In addition, minor typographical errors will be corrected to achieve conformity with federal regulations.

The Department initiated the administrative process for amendment of R. 61-79 by publishing a Notice of Drafting in the State Register September 22, 2000. Notice of the Department's intent to promulgate this amendment was also published on the Department's Internet website www.scdhec.com/co/regs/. No comments were received. See Discussion of Proposed Revisions and Statement of Need and Reasonableness.

Discussion of Proposed Revisions:

SECTION	CHANGE (all for federal compliance)
124.5(d)	Add clarification
260.10	Add two new definitions in alphabetical order
261.3(c)(2)(ii)(D)	Remove listing
261.6(a)(3)(ii), (iii), & (iv)	Replace (ii), (iii); and (iv)
261.6(c)(2)(i)	Replace; cite State authority before federal authority
261.11(b)	Add federal authority
261.22(a)(1)	Add SW-846 citation
261.31(a)	Edit entry for F037
261.31(b)(2)(ii)	Replace verb "treated" with "generated"
261.32 Table	Remove six listings: K140, K064, K065, K066, K090, K091
261.33(f)	Remove listing for U408

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261.38	Replace Table I
261.38(c)(3)(i)	Replace paragraph
261 Appendix VII	Remove listing for K140
261 Appendix VIII	Remove listing for tribromophenol
262.34(a)(4)	Edit citation for 268
262.34	Add (g) and (h) for F006 listings
262.41(b)	Replace paragraph regarding waste exports
264.112(c)(3)	Edit paragraph
264.113(e)	Add federal authorities
264.340(b) - (e)	Add new (b); renumber previous (b) through (d) as (c) through (e)
264.573(b)	Edit paragraph
264.601	Replace introductory paragraph adding MACT references
264.1033(a)(2)(i)	Remove obsolete requirement
265.118(e)(2)	Add federal authority
265.143 (b), (b)(2), (f), & (g)	Repromulgate
265.340(b) & (c)	Add new (b), move previous (b) to (c) to facilitate MACT rule
265.1080(b)(5)	Replace paragraph
265.1084(b)(3)(iii)	Replace paragraph
265.1084(b)(3)(iv)	Edit definition of "n" after equation
265.1090(a)	Replace (a)
266.43(b)(1) & (5)	Edit paragraphs
266.100 (b) through (f) and (h)	Add new (b); move previous (b) and (c) to (c) and (d); amend new (d)(1) and (d)(3); move previous (d) and (e) to (e) and (f); add new (h) to facilitate MACT rule
266.101(c)(1)	Edit both (c) and (1)
266.102(e)(6)(i)(B)	Enumerate the second paragraph of 102(e)(6)(i)(B) as "(2)"; redesignate (e)(6)(iii) as (ii)
266.105(c)&(d)	Add new (c), move previous (c) to (d) to facilitate MACT rule
266.112(b)(1)	Add language to facilitate MACT rule
266.112(b)(2)(i)	Edit and add language and note to facilitate MACT rule
266 Appendix VIII	Replace title; add two listings to Methyl ethyl ketone; add two notes to end of table
268.7(a)(1)	Edit to add cross reference
268.7(a)(3)(iii)	Add (iii) to facilitate LDR amendment
268.33	Remove text and reserve
268.40 Table (j)	Delete K140 and U408 from Table; Add clarification note after Table
268.48 (a) Table	Delete 2, 4, 6 Tribromophenol
268.49(c)(1)(A) & (B)	Replace, adding language facilitating LDR amendment
270.19 leadin & (e)	Edit introductory paragraph and insert new (e) to facilitate LDR amendment
270.22	Add new introductory paragraph; move (a) to follow leadin, keep existing following language (a) through (f)
270.27(a)(5)&(7)	Replace both paragraphs to clarify requirements (no changes in (6))
270.42(g)(1)(ii)	Replace to clarify requirements
270.43(b)	Add alternative citation to facilitate MACT rule
270.62	Add leadin to facilitate MACT rule
270.66	Add leadin to facilitate MACT rule

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control (DHEC) invites members of the public and regulated community to attend a staff-conducted informational forum to be held on August 27, 2001, at 1:00 p.m. in Peebles Auditorium, 3rd floor, 2600 Bull Street, Columbia, S.C. The purpose of the forum is to receive comments from interested persons on the proposed amendment of R. 61-79. Written comments may be also be submitted to John Litton, Director of the Division of Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by 5:00 p.m. on August 27, 2001. Comments received shall be considered by staff in formulating the submission to the Board of Health and Environmental Control for a public hearing scheduled for September 13, 2001. Relevant technical comments shall be summarized by staff for the Board=s consideration at the public hearing noticed below.

Information to obtain copies of the proposed text for public notice and comment may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on September 13, 2001. The Hearing will be held in the Board Room of the Commissioner=s Suite, third floor, Aycock Building of the Department of Health and Environmental Control (DHEC) at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda is published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Written comments to be considered at the public hearing may be submitted by writing to John Litton, Director of the Division of Waste Management, 2600 Bull Street, Columbia SC, 29201. To be considered, comments must be received by 5:00 p.m. August 27, 2001. Comments received will be considered by staff in formulating the submission to the Board of Health and Environmental Control on September 13, 2001. Relevant technical comments will be summarized for the Board's consideration.

Information to obtain copies of the amended regulations to be considered at the Board hearing may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-79 Hazardous Waste Management Regulations:

Purpose: The purpose of this amendment is to meet compliance requirements of the United States Environmental Protection Agency (EPA), which promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments which the Department is proposing to amend include the following: Final National Emissions Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, sometimes called NESHAPS or MACT (for Maximum Achievable Control Technologies); technical amendments to Land Disposal Restrictions Phase IV (corrections which became effective October 20, 1999); a new rule which

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allows certain generators of F006 sludges to accumulate up to 180 days without a permit if the sludge is recycled; the vacating of previous listings for organobromine production wastes; and other minor amendments. In addition, minor typographical errors will be corrected to achieve conformity with federal regulations. These rules and other amendments have been published in the Federal Register between September 30, 1999, and June 30, 2000.

Legal Authority: S. C. Code Ann. Section 44-56-30, the Hazardous Waste Management Act, to facilitate the Resource Conservation and Recovery Act of 1976 as amended.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control and publication in the State Register as a final regulation, amended regulations will be provided to the regulated community at cost through the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Adoption of the proposed amendments and corrections to R.61-79 will enable compliance with recent federal amendments. See Purpose above.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The overall effects of these rules are expected to be beneficial to the public health and environment and also reflect federal provisions in State law.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments are not adopted in South Carolina.

Text

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2639

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Chapter 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq., 48-1-20 et seq., and 1-23-10 et seq.

R.61-79. Hazardous Waste Management Regulations

Preamble: In June 1995 the Department of Health and Environmental Control R. 61-79, Hazardous Waste Management, was amended by adding financial assurance requirements for cleanup and/or restoration of environmental impairment commercial hazardous waste treatment, storage, and disposal facilities. The South Carolina Court of Appeals determined that the June 1995 amendment was not promulgated correctly and vacated the additional financial assurance regulations in a decision issued on April 4, 2000.

A Notice of Drafting was published in the State Register on October 27, 2000, that proposed removal of the cleanup and/or restoration of environment impairment financial assurance regulations. Notice of the Department's intent to promulgate this amendment was also published on the Department's Internet website www.scdhec.com/co/regs/. One comment was received. This comment and another comment received before the start of the comment period both urged staff to repromulgate this amendment; however, adverse developments affecting financial assurance mechanisms covering hazardous waste management facilities suggest that, if the agency does propose a new regulation on financial assurance, a new assessment of alternatives would be required.

Discussion of Proposed Revisions:

SECTION CITATION	EXPLANATION OF CHANGE: TO COMPLY WITH SOUTH CAROLINA COURT OF APPEALS WHICH VACATED ORDER ON APRIL 4, 2000
264.140(c)	Remove and reserve (c)
264.152	Remove entire section, (a) through (d); reserve 264.152
264.153	Remove entire section, (a) through (i); reserve 264.153
264.154	Remove entire section, (a) through (g) including appendices; reserve 264.154
265.140(c)	Remove and reserve (c)
265.152	Remove entire section, (a) through (d); reserve 265.152
265.153	Remove entire section, (a) through (h); reserve 265.153

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control (DHEC) invites members of the public and regulated community to attend a staff-conducted informational forum to be held on July 23, at Peeples Auditorium, at 9:30 a.m., 3rd floor, DHEC, 2600 Bull Street, Columbia, S.C. The purpose of the forum is to receive comments from interested persons on the proposed amendment of R. 61-79. Written comments may also be submitted to John Litton, Director of the Division of Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by 5:00 p.m. on August 27, 2001. Comments received shall be considered by staff in formulating the submission to the Board of Health and Environmental Control for a public hearing scheduled for October 11, 2001. Relevant technical comments shall be summarized by staff for the Board's consideration at the public hearing noticed below.

Information to obtain copies of the proposed text for public notice and comment may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on October 11, 2001. The Hearing will be held in the Board Room of the Commissioner's Suite, third floor, Aycock Building of the Department of Health and Environmental Control (DHEC) at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda is published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Written comments to be considered at the public hearing may be submitted by writing to John Litton, Director of the Division of Waste Management, 2600 Bull Street, Columbia SC, 29201. To be considered, comments must be received by 5:00 on August 27, 2001. Comments received will be considered by staff in formulating the submission

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to the Board of Health and Environmental Control on October 11, 2001. Relevant technical comments will be summarized for the Board's consideration.

Information to obtain copies of the amended regulations to be considered at the Board hearing may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11). This amendment will require legislative review.

DESCRIPTION OF REGULATION: Amendment of Regulation 61-79, South Carolina Hazardous Waste Management, to remove certain State regulations which are more stringent than the federal baseline requirements.

Purpose: This amendment formalizes State more-stringent regulations vacated by the South Carolina Court of Appeals on April 4, 2000.

Authority: The proposed amendment will continue to be in accord with the federal authorization requirements of the U.S. Environmental Protection Agency Resource Conservation and Recovery Act of 1976 as amended, Title II, Subtitle C Section 3009; South Carolina Hazardous Waste Management Act 44-56-30 et seq.; the Pollution Control Act 48-1-10 et seq.; and the Administrative Procedures Act 1-23-10 et seq.

Plan for implementation: The proposed amendments, after public comment and Department response, would be incorporated within R.61-79 upon approval of the Board, General Assembly, and publication in the State Register. Because the primary communication and enforcement tools of the Department are its regulations, the regulatory approach to resolving recurring environmental and public health concerns is the most feasible and cost effective approach available. The proposed modifications would be implemented in the same manner as other regulations are implemented.

The NEED, REASONABLENESS, and EXPECTED BENEFIT: This amendment removes regulatory requirements that were vacated by a decision of the South Carolina Court of Appeals on April 4, 2000.

BENEFIT/COST DETERMINATION: Due to the fact that environmental impairment financial assurance is still a statutory requirement [44-56-60(c)(3)], there should be no significant change in cost to commercial hazardous waste facilities.

SUMMARY OF UNCERTAINTIES: None other than those stated above.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Unknown.

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

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2640
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 Chapter 61

Statutory Authority: 44-56-30, 48-1-10 et seq., 1-23-10 et seq.

R.61-79, Hazardous Waste Management

Preamble: The Department of Health and Environmental Control proposes to amend R.61-79, Hazardous Waste Management Regulations, to add listings for certain organotin manufacturing residues. The Department proposes to add South Carolina-designated hazardous wastes from specific sources to current regulations by including waste residues from the manufacture of organotin compounds, which contain tri- (organo) substituted organotin compounds, to include tributyltin and its analogs. These South Carolina-designated hazardous wastes would be included in the 261.32 hazardous waste list, and the new South Carolina-designated hazardous waste constituents would also be incorporated into 261 Appendix VII, 261 Appendix VIII, and 264 Appendix IX. See Discussion below and Statement of Need and Reasonableness herein.

The Notice of Drafting was published December 22, 2000. One comment was received, which stated that one of the companies releasing these proposed South Carolina-designated hazardous wastes has modified its process to recycle future wastes. See also Discussion of Proposed Revisions and Statement of Reasonableness.

Discussion of Proposed Revisions:

Section Citation	Explanation of Changes: to enable the State to regulate certain organotin wastes
261.32 Table	Amend Table heading to include "SC" in addition to EPA and to change "#" to "No." Add section at end of table for Organotin wastes, define, indicate toxicity (T)
261.32 Appendix VII	Amend Table heading to include SC in addition to EPA Add K900
261 Appendix VIII	Add nine organotin listings to Hazardous Constituents, including common name, chemical abstracts name, chemical abstracts number.
264 Appendix IX	Add Tributyltin as Common Name, 688-73-3 as CAS RN, Tributylstannane as Chemical abstracts service index name, NOAA 1993 10 as Suggested methods, and 0.5 as PQL (Φg/L) . Add footnote 10 for nonessential matrices.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invites interested members of the public and regulated community to attend a staff-conducted informational forum to be held July 27, 2001 at 1:00 p.m. in Peoples Auditorium, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia SC. The purpose of the forum is to answer questions, clarify issues, and receive comments from interested persons on the proposed amendments to the Regulations. Comments received shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled for October 11, 2001.

Interested persons may submit written comments to John Litton, Bureau of Land and Waste Management, S. C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, all comments must be received by 5:00 on August 27, 2001, the close of the comment period.

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on October 11, 2001. The Hearing will be held in the Board Room of the Commissioner's Suite, third floor, Aycock Building of the Department of Health and Environmental Control (DHEC) at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda is published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Written comments to be considered at the public hearing may be submitted by writing to John Litton, Director of the Division of Waste Management, 2600 Bull Street, Columbia SC, 29201. To be considered, comments must be received by 5:00 p.m. August 27, 2001. Comments received will be considered by staff in formulating the submission to the Board of Health and Environmental Control on October 11, 2001. Relevant technical comments will be summarized for the Board's consideration.

Information to obtain copies of the amended regulations to be considered at the Board hearing may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11). This amendment will require legislative review.

I. DESCRIPTION OF REGULATION:

Proposed amendment of Regulation 61-79, Hazardous Waste Management Regulations

Purpose: The purpose of this amendment is to bring certain organotin compounds under State hazardous waste management regulation. Past organotin waste management practices in South Carolina have resulted in extensive environmental and ecosystem damage from these organotin compounds. Application of hazardous waste program requirements to this waste stream is appropriate for protection of public health and the environment. The Department is statutorily required to promulgate regulations, procedures, or standards as may be necessary to protect the health and safety of the public, the health of living organisms, and the environment. The Department has determined that hazardous waste oversight is required because these wastes have demonstrated the ability to adversely impact public health, other life forms, and the environment when not managed correctly

Authority: The proposed amendment will continue to be in accord with the federal authorization requirements of the U.S. Environmental Protection Agency Resource Conservation and Recovery Act of 1976 as amended, Title II, Subtitle C Section 3009; South Carolina Hazardous Waste Management Act 44-56-30 et seq.; the Pollution Control Act 48-1-10 et seq.; and the Administrative Procedures Act 1-23-10 et seq.

Plan for implementation: The proposed amendments, after public comment and Department response, would be incorporated within R.61-79 upon approval of the Board, General Assembly, and publication in the State Register. Because the primary communication and enforcement tools of the Department are its regulations, the regulatory approach to resolving recurring environmental and public health concerns is the most feasible and cost effective

approach available. The proposed modifications would be implemented in the same manner as other regulations are implemented.

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

Past organotin waste management practices in South Carolina have resulted in extensive environmental and ecosystem damage from these organotin compounds. Application of hazardous waste program requirements to this waste stream is appropriate for protection of public health and the environment. The Department is statutorily required to promulgate regulations, procedures, or standards as may be necessary to protect the health and safety of the public, the health of living organisms, and the environment. The Department has determined that hazardous waste oversight is required because these wastes have demonstrated the ability to adversely impact public health, other life forms, and the environment when not managed correctly. The Department has used EPA and South Carolina Hazardous Waste Regulations (R.61-79.261.11) as criteria for making this determination.

The Department, after considering the following factors, concludes that these wastes have been demonstrated capable of posing a substantial present or potential hazard to human health, other life forms, or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent: Releases of organotin compounds to South Carolina surface waters have resulted in fish kills and contaminated waterways which require remediation. Organotin compounds are toxic to the ecosystem, specifically aquatic life, including most freshwater sport fishing species found in South Carolina, at levels less than 10 parts per billion, ug/L. Tributyltins (TBT), also referred to as trisubstituted organotins, readily sorb to sediments and suspended solids and can persist there. TBT concentrations in water and suspended matter are predicted to decrease rapidly and TBT concentrations in sediment and benthic organisms decrease at a much slower rate. Scientific literature demonstrates that tributyltin (TBT) has chronic effects on certain aquatic organisms, including Algae, Zooplankton, Amphipods, Molluscs, Bivalves, Gastropods, and Crustaceae at extremely low concentrations ranging from 1-1000 parts per trillion (ng/L). Already, concern over the long-term environmental effects of TBT has prompted restrictions on the use of TBT antifoulant paints in Europe and the United States. In 1954 in Stalinon, France, triethyltin was determined to have caused the death of 110 persons, as a toxic contaminant in medication. In 1999 in Jiangxi Province, China, more than 1000 persons were poisoned by organotin compounds, hospitalizing hundreds, with 3 persons dying.

(ii) The concentration of the constituent in the waste: The high biological activity of some compounds toward aquatic organisms lead to deleterious impacts in aquatic ecosystems. Typically, mono-, di-, and tributyltin are found in raw wastewater in the range of 200 to 500 ng/l, and 500 to 1000µg/kg (dry matter) in sludge from wastewater treatment plants that receive waters from organotin manufacturers.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in R.61-79.261.11(a)(3)(vii). The fate of organotins in lakes is the result of a combination of transport phenomena, including dilution into the surroundings and scavenging to sediments, microbial and algal biodegradation, and transfer into biota (aquatic food chain), where much higher TBT concentrations occur than in the water column. Releases of organotins to surface waters can result in persistence of these constituents in sediments, which can be a continuing threat to aquatic life if released through storm events.

(iv) The persistence of the constituent or any toxic degradation product of the constituent. Dated sediment cores indicate that TBT is very persistent in anoxic lake sediments and are stored there for long periods of time. Hence, sedimentation and persistence in anoxic lake sediments plays a pivotal role in the fate of these compounds in lakes. Anaerobic processes may not be very significant for the environmental degradation of TBT. In general these organotins can be very persistent in sediments. They either adsorb onto particulate matter, and are thus more likely to be removed from the water into the sediments, or they stay in the dissolved phase, from which they are more likely to be accumulated by aquatic organisms. In the dissolved state, tributyltin can also be adsorbed by bacteria. Tributyltin is not generally persistent in water; however, it is stored in sediments for a period of years to more than a decade. Unless remediated, the contaminated sediments in these water bodies could release organotins for a long period of time.

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(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation. Organotins degrade stepwise with exposure to ultra violet light and oxygen to less- but still harmful organic compounds.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems. TBT is rapidly accumulated in aquatic organisms. Bioconcentration of zenobiotic compounds is important with respect to biomagnification within the food web and contamination of human diet. Both storage and elimination of toxics are affected by the organism's biotransformation capacity. These biologically catalyzed chemical conversions are the basis for mechanisms that govern the persistence, bioconcentration, and toxicity of zenobiotics. Also, with respect to the behavior of a chemical in an entire ecosystem, biotransformations by aquatic organisms along with physicochemical transport and transformation processes dictate the overall fate in the environment. Aquatic organisms can concentrate organotin products from the water, suspended particles, organic matter, sediment, and detritus into the lake or river.

(vii) The plausible types of improper management to which the waste could be subjected. Improper management has been demonstrated through leaks, spills, stormwater transport of leaks & spills; also during transportation, packaging, and handling. Conventional wastewater treatment plants may be damaged by this waste stream and subsequently release the hazardous constituents into surface waters.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis. Kentucky, Alabama, New Jersey, and South Carolina are known to generate organotins. Compiled data summarizing quantities generated is not available. Some of the wastes in South Carolina have been sent to Subtitle D landfills and the volumes have not been documented.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent. Most of the environmental damage which has occurred in South Carolina took place on private land; therefore the State damage assessment team did not perform the assessment which would have taken place on State waters. The State, however, found that almost all life had died in the lake most affected. Storm events that cause a significant mixing of sediments in Red Bank Creek, Crystal Lake, Durham Pond, or Congaree Creek could result in surface water concentrations high enough to once again cause a fish kill.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent. The United States Environmental Protection Agency (USEPA) has established draft ambient water quality criteria for tributyltin. Other states have listed organotins as hazardous wastes after demonstration of high contamination in harbors and coastal areas caused by TBT anti-fouling treatments on boats. There has been a world effort to remove this product from products, particularly from paints; other countries (including France, Norway, Finland, Germany and U.K.) have banned and/or controlled the use of TBT-containing antifouling paints. The use of tributyltin on boats, except for military ships, will be banned in the United States after 2003.

(xi) Such other factors as may be appropriate. Although the industry, particularly as it organizes itself as ORTEP Association (Organotin Environmental Programme), has been successful in publishing reassuring technical reviews which discount harmful effects of organotin on human health and the environment, independent peer-reviewed publications document that mismanagement of organotins clearly causes a variety of negative impacts to human health and the environment.

In addition, the Department may list classes or types of solid waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in 261.3 or Section 1004(5) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901.

III. DETERMINATION OF COSTS AND BENEFITS:

The Benefit/Cost determination is uncertain because financial information for private facilities is not available to the State. However, the cost of management of wastewater treatment facilities will be significantly reduced if the State regulates organotins. Past organotin waste management practices in South Carolina have resulted in releases of untreated organotin compounds which have resulted in several fish kill events on private property as well as

permanent damage to two water treatment facilities; one of the facilities cost \$3 million to repair; the other facility closed permanently; in addition, the temporary doubling of the cost of replacement water to about 15,000 residences.

The total cost of evaluation and possible remediation of approximately sixteen miles of organotin contaminated surface waters has not yet been determined. The cost is likely to be significant given that the cost of excavating hazardous wastes averages \$10/ton; shipping costs about \$50/ton; burial costs about \$150/ton; and incineration costs average about \$1,000/ton. If oxidation is required for destruction, that will be more expensive. EPA reports cleanup costs predictions for releases of concern will not be available until the volumes of waste and the potentially unusual treatment methods are identified.

IV. UNCERTAINTIES OF ESTIMATES:

Although the Department has been informally advised there are companies which might be inadvertently affected by this listing, the Department has not been able to obtain specific information. Staff anticipates that by the Department addressing wastes from specific sources (261.32), such unintended consequences will be avoided. The purpose of the Notice of Proposed Regulation is to solicit specific information and advice upon which to base a proposed Final Regulation, and clear up this uncertainty.

V. EFFECT ON ENVIRONMENT AND PUBLIC HEALTH.

This proposed regulation provides prevention measures to reduce the chance of future releases and should avoid dangerous exposures of certain organotin compounds upon public health, other life forms, and the environment.

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

The releases of untreated organotin compounds have resulted in several fish kill events on private property as well as permanent damage to two water treatment facilities; one of the facilities cost \$3 million to repair; the other facility closed permanently. Most of the other environmental damage which has occurred in South Carolina took place on private land; therefore the State damage assessment team did not perform the assessment which would have taken place on State waters. The State, however, found that almost all life had died in the lake most affected.

VII. PLAN FOR IMPLEMENTATION: Upon publication in the State Register as a final regulation, amended regulations will be provided to the regulated community at cost through the Department's Freedom of Information Office.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: **www.scstatehouse.net** If you do not have access to the Internet, the text may be obtained from the promulgating agency.

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Document No. 2641
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-55-10 et seq.

61-58. State Primary Drinking Water Regulations.

Preamble:

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

Proposed revisions will include requirements promulgated under the National Primary Drinking Water Regulations: Public Notification Rule, and the Radionuclide Rule. The Public Notification Rule revises current public notification procedures requiring public water systems to notify the public any time a water system violates a primary drinking water regulation or has other situations posing a risk to public health. This rule applies to all public water systems. The final Public Notification Rule was published in the May 4, 2000, Federal Register [vol.165, no.87] with an effective date of June 5, 2000, and will comply with 40 CFR Part 141 and 142. Primacy States must adopt this rule by May 6, 2002

The Radionuclide Rule revises the monitoring requirements for radionuclides. Monitoring and reporting of radionuclides applies to Community public water systems and is mandated by the 1996 amendments to the Federal Safe Drinking Water Act (SDWA). Proposed regulations will comply with 40 CFR Parts 141 and 142.

The Radionuclide Rule was published in the December 7, 2000 Federal Register [vol.65, no.236], with an effective date of December 8, 2003.

Other minor revisions will include, but not be limited to, deletion of the Maximum Contaminant Level (MCL) for Nickel and the aldicarbs, deletion of the Phase I Volatile Organic Contaminant (VOC) monitoring for surface water systems and the review of the analytical methodology for coliform. These revisions are to align the State Primary Drinking Water Regulations with federal regulations. These additional revisions will conform R.61-58 to federal regulations through 2001.

The proposed regulations will comply with federal law, conform R.61-58 to the federal regulations, and are exempt from legislative review. Neither a preliminary assessment report nor a fiscal impact statement is requirement. A Notice of Drafting for the proposed amendments was published in the State Register on January 26, 2001. See Statement of Need and Reasonableness herein.

Section-by-Section Discussion:

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

SECTION	ITEM
61.58 TABLE OF CONTENTS	Revises R.61-58.5 by renumbering, and rearranging Sections.
61-51.4(F)(6)	Adds definition of lead free to include compliance with established standards
61-58.5(B)(2)	Deletes the MCL for Nickel Revises numbering
61-58.5(B)(3)(b)	Revises public notification requirements for Nitrate

61-58.5(C)(1)	Revises references to comply with revisions in Section (B)(2)
61-58.5(C)(12)(b)	Revises references to R.61-58.6 to incorporate new Public Notification requirements.
61-58.5(C)(15)(d)	Deletes reference concerning separate distribution systems
61-58.5(D)(2)	Deletes MCL for Alachlor, Aldicarb, Aldicarb sulfoxide, and Aldicarb sulfone. Revises numbering
61-58.5(E)(7)(g)(v)	Revises wording to delete Alachlor and Aldicarbs and to make wording more in line with Federal Regulations.
61-58.5(E)(7)(k)(iii)	Deletes reference concerning separate distribution systems
61-58.5(E)(7)(r)	Deletes detection limit for Alachlor and Aldicarbs
61-58.5(F)	Deleted existing Section (F)
61-58.5(G)	Deleted existing Section (G)
61-58.5(M)	Deleted existing Section (M)
61-58.(H) - (W)	Repositioned and/or Renumbered Sections (see following sections)
61-58.(Y) - (HH)	Repositioned and/or Renumbered Sections (see following sections)
61-58.5(F)	Previously Section (H) - no additional revisions
61-58.5(G)	Previously Section (I)
61-58.5(G)(1)(e)&(f), (2)(d)&(g), (3)(iii), (5)(b), & (7)(a)	Revises references to comply with revisions in Section numbering and organization.
61-58.5(G)(6)(c)	Revises analytical methods available for total coliform analyses
61-58.5(G)(6)(d)	Deletes analytical methods for total coliform included in revisions of R.61-58.G)(6)(c) above.
61-58.5(G)(6)(d)	Previously paragraph (e). Revises analytical methods to meet current edition of Standard Methods.
61-58.5(G)(7)(a)	Revises reference to Section F
61-58.5(H)	Previously Section (J) - Revises the title
61-58.5(H)(1)-(8)	Revises MCL and compliance standards for Radionuclides
61.58-5(I)	Previously Section (K) - Revises the title
61.58-5(I)(1)-(3)	Revises references to Section (H) Adds new monitoring and compliance requirements for Radionuclides
61-58.5(J)	Previously Section (L) - Revises the title
61-58.5(J) (1)-(2)	Deletes Maximum Contaminant Level Goals for Man-Made Radionuclides Adds Maximum Contaminant Level Goals for Radionuclides
61-58.5(K)	Previously Section (N)
61-58.5(K)(1)-(4)	Revises paragraphs (1)-(3) to comply with current Federal regulations

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	Adds paragraph (4) to establish criteria for determining compliance
61-58.5(L)	Previously Section (S)
61-58.5(L)(2)-(3)	Revises dates and references in paragraph (2) & (3)
61-58.5(M)	Previously Section (T)
61-58.5(M)(5)-(9), (12)	Revises references to comply with revisions in Section numbering and organization.
61-58.5(M)(11) & (14)	Revises dates and references in paragraphs (11) & (14)
61-58.5(N)	Previously Section (AA) - No additional revisions
61-58.5(O)	Previously Section (BB)
61-58.5(O) (2) - (5)	Deletes paragraphs (2) & (3) Renumbers paragraphs (4) & (5)
61-58.5(P)	Previously Section (GG)
61-58.5(P)(2)	Revises dates and references in paragraphs (2)(a) & (b)
61-58.5(Q)	Previously Section (HH)
61-58.5(Q)(2)(a) & (b)	Revises dates and references in paragraphs (2)(a) & (b)
61-58.5(R)	Previously Section (O) - No additional revisions
61-58.5(S)	Previously Section (P) - No additional revisions
61-58.5(T)	Previously Section (CC) - No additional revisions
61-58.5(T)(11)-(13)	Revises references to comply with revisions in Section numbering and organization.
61-58.5(U)	Previously Section (Q) - No additional revisions
61-58.5(V)	Previously Section (R) - No additional revisions
61-58.5(W)	Previously Section (V) - Revises references to comply with revisions in Section numbering and organization.
61-58.5(X)	No changes
61-58.5(Y)	Previously Section (DD) - No additional revisions
61-58.5(Z)	Previously Section (EE) - No additional revisions
61-58.5(AA)	Previously Section (FF) - No additional revisions
61-58.5(BB)	Previously Section (W) - Revises references to comply with revisions in Section numbering and organization.
61-58.5(CC)	Previously Section (U) - No additional revisions
61-58.6	Revises title to include "of Drinking Water Violations"
61-58.6(B)(5)	Adds paragraph (5)
61-58.6(D)(2)(e)	Add paragraph (2)(e)
61-58.6(E)	Deleted and replaced
61-58.6(E)	New title and establishes new public notification requirements
61-58.7(B)(4)	Identifies exception from using a certified laboratory.
61-58.9(C)(8)	Revises references to R.61-58.5(N)
61-58.9(F)(1), (6) - (8)	Revises references to R.61-58.5(N)
61-58.9(G)(2)	Revises references to R.61-58.5(F)
61-58.9(I)	Add variances and exemptions from the MCL for Radionuclides
61-58.10(C)(2)(f), (E)(1)(c) & (4), (H)(1)(a), (3), (4), (5) & (6)	Revises references and dates
61-58.10(G)(1)(e)(iv)	Establishes notification requirements

61-58.10(H)(6)(c)(i) & (ii)	Establishes additional reporting requirements
61.58.10(I)	Adds Section to include Recycle Provisions
61-58.11	Revised in its entirety to comply with minor revisions to the Federal Lead and Copper Rule.
61-58.12(C), (D), (E)	Revises and establishes new reporting requirements to comply with the new requirements to R.61-58.6.
61-58.13(B)(2), (6)-(9), (C)(2), (D)(2)-(4), (E), & (F)	Revises references and dates. Establishes additional general requirements, monitoring, compliance, and reporting requirements.
Appendix A	Replaces existing Appendix A with Appendix A to 61-58.6
Appendix B	Replaces existing Appendix B with Appendix B to 61-58.6
Appendix C	Replaces existing Appendix C with Appendix C to 61-58.6
Appendix D to R.61-58.12	Adds Appendix D to 61-58.12

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on September 13, 2001. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

These are for federal compliance and no changes are expected.

Interested persons are also provided an opportunity to submit written comments on the proposed amendment by writing to Valerie A. Betterton at the Bureau of Water, S.C. DHEC, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be received no later than 4:00 p.m. on August 27, 2001. Comments received by the deadline date shall be considered by staff in formulating the final proposed amendment for public hearing on September 13, 2001, as noticed above. Comments received by the deadline date shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

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

Statement of Need and Reasonableness:

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

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

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Purpose: The Department proposes to revise R.61-58 to adopt federal regulations commonly referred to as the Public Notification Rule, and the Radionuclide Rule, and will also make other minor revisions. Proposed revisions will comply with federal law and will maintain conformity with federal regulations pursuant to 40 CFR Parts 141 and 142 through 2001. See Preamble and Discussion above and Statement of Need and Reasonable below.

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

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

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

DETERMINATION OF COSTS AND BENEFITS:

The proposed amendments are exempt from the requirements of a preliminary fiscal impact statement because each change is necessary to maintain conformity with Federal Regulations. In amending the Federal regulations, for public water systems, the estimated costs of complying with the new Public Notification regulation are divided into three component activities: notice preparation costs, notice distribution costs, and costs of repeat notices. Only public water systems with a violation or other situation requiring a public notice incur costs under this rule. Notice preparation costs include those costs that a public water system must incur to comply with the requirements regardless of how many copies of the notice it must deliver. These costs include the labor hour costs associated with becoming familiar with the requirements for the notice, collecting data regarding monitoring results and the violation, consulting with the primacy agency (when necessary), preparing the technical content of the public notification in a format suitable for distribution, identifying the recipients of the notice, and providing instructions about production of the notice. Notice distribution costs are costs that increase or decrease along with the number of public notices to be delivered. These costs include costs of producing the reports (costs of paper and photocopying or printing), postage costs when the notice is mailed, costs of posting notices in specified locations, and other labor hour costs of producing and delivering the notices. Repeat notice costs involve the costs of updating the initial notice and delivering a second copy of the notice, if the violation is not corrected within the specified time period.

Two requirements under the Radionuclide Rule are expected to incur costs and benefits: the adoption of the uranium MCL of 30 g/L and the requirement for separate monitoring of radium-228, which is expected to result in additional systems in violation of the combined radium-226/- 228 MCL of 5 pCi/L. EPA estimates that nationally these requirements will result in annual compliance costs of \$81 million in 1999 dollars, with \$25 million of this annual cost being due to mitigation of systems newly in violation of the radium-226/-228 standard due to new monitoring requirements, \$51 million due to mitigation of systems in violation of a uranium MCL of 30 g/L, \$4.9 million due to monitoring and reporting, and \$ 0.06 million due to new implementation costs for States. While these represent new compliance costs, most water systems will experience reduced compliance costs in the long-term because of reduced monitoring frequency for systems with low contaminant levels under the Standardized Monitoring Framework.

The uranium cancer risk reduction benefits are estimated to be \$3 million annually, which do not include the non-quantified kidney toxicity risk reduction benefits. As discussed in the NODA, there are significant uncertainties associated with any estimate of drinking water benefits, including uncertainties in the unit risks used to estimate risk reductions and the various health endpoints that cannot yet be fully quantified.

Other non-quantified benefits include those related to the technologies used to remove radium and uranium from ground water (e.g., water softening technologies like ion exchange, lime softening, and membrane softening and iron removal technologies like green sand filtration and oxidation/filtration). EPA does not have enough information to estimate these benefits, but believes that they could be significant. Examples of benefits related to water softening include reductions in excessive calcium and manganese carbonate scaling in distribution systems, water heaters, and boilers and reductions in soap and detergent use. Examples of benefits related to iron removal include improvements in color and taste and reduction in staining of clothes, sinks, and basins.

UNCERTAINTIES OF ESTIMATES: Unknown.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Minimal.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There could be a substantial adverse impact on public health if the amendments are not implemented. Failure of the department to adopt the federal regulations could result in the department losing primacy to enforce the Safe Drinking Water Act and the National Primary Drinking Water Regulations.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.scstatehouse.net If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2636
DEPARTMENT OF REVENUE
 CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations:

Type Tax	Regulation	Regulation Title
Sales Tax	117-174.38	Automobile Dealer's Demonstrator
	117-174.221	Vendor's Discount
Property Tax	117-109	Determining the Fair Market Value of the Inventory Merchandise of Merchants
	117-124.14	Inventory Tax – Alcoholic Liquors
	117-121	Mobile Homes Located on Leased Land Assessed as Real Property
	117-107	Assessment of Manufacturers' Property
	117-108	Assessment of Property of Merchants
Administrative	117-5	Appeals Procedure by Which a Person May Contest the Authority of the Commission to Promulgate a Proposed Regulation.
	117-4	Procedure for Appeal to the Tax Commission from a County Board of Tax Appeals when the Statute Providing

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		for such Appeal Fails to Specify the Manner in Which the Appeal is to be Made or the Grounds Therefor and Limits the Appeal to "Relief as Afforded by General Law".
	117-3	Appeal Procedure Before County Tax Board of Appeals.
Estate Tax	117-181.1	Rules and Regulations
	117-181.2	Transfer of Securities, Deposits or Other Assets
	117-181.3	Transfer of Contents of Safe Deposit Boxes.
Income Tax	117-60	Nonresidents Having Income from a Business in this State Subject to Tax.
	117-75	When Sales Allocated to State of the Purchaser.
	117-76	Nonresident Partners of a Partnership May File Single Return.
	117-77	Filing of a Consolidated Return for Two or More Corporations.
	117-79	Extension of Time for Filing and Tentative Returns Required.
	117-80	Application for Refund of Deceased.
	117-82	Income Tax in Another State Defined.
	117-84	Bond for Nonresidents Conducting a Temporary Business.
	117-85	Filing of Reports and Annual License Fees of Corporations.
	117-86	Foreign Corporation Defined.
	117-87.54	Definitions of "Taxable", "State" and "Net Income Tax" in Connection with the Allocation Formula.
	117-87.69	Allocation and Apportionment of Income.
	117-87.74	Nonresident Aliens
	117-87.78	Retirement Benefits Paid to Public School Teachers and State Employees Living in this State.
	117-89.3	License Fees--Professional Associations.
	117-91.2	Withholding on Casuals.
	117-91.3	Withholding of Rents
	117-91.4	Withholding on Rentals Paid to Nonresidents.
	117-91.5	Relieve Residents Working Without the State from Double Withholding.
	117-91.6	Agricultural Labor.
	117-91.8	Qualification to do Business.
	117-91.9	Credit for Tax Withheld by an Employee Even Though Not Paid to Tax Commission by Employer.
	117-91.11	When Federal Forms W-2, W-4 and 1099 are Acceptable by the South Carolina Tax Commission.
	117-95.1	Agreement for Withholding of Income Tax.
License Tax	117-32	Stamps Required on Certain Articles.
	117-33	Records.
	117-36	Cigarettes Displayed in Vending Machines.
	117-37	Cigars.
	117-44	Documentary Stamps--Sale of by Others.
	117-45.1	South Carolina Documentary Stamps must be Affixed before Instrument is Recorded.

	117-46	Base of the Documentary Stamp Tax When Consideration Received for Property Transferred Does Not Have a Readily Ascertainable Fair Market Value.
Video Game	117-191.1	Technical Standards for Video Game Machines.
	117-191.2	Technical Standards for Location Controller.
	117-191.3	Remote Shutdown of a Machine or Machines.

Preamble:

The South Carolina Department of Revenue is considering repealing various sales tax, property tax, administrative, estate tax, license tax, video game and income tax regulations since they are no longer needed due to changes in the law.

Discussion

The South Carolina Department of Revenue is considering repealing the following sales tax, property tax, administrative, estate tax, license tax, video game and income tax regulations since they are no longer needed due to changes in the law.

Type Tax	Regulation	Regulation Title
Sales Tax	117-174.38	Automobile Dealer's Demonstrator
	117-174.221	Vendor's Discount
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	117-124.14	Inventory Tax – Alcoholic Liquors
	117-121	Mobile Homes Located on Leased Land Assessed as Real Property
	117-107	Assessment of Manufacturers' Property
	117-108	Assessment of Property of Merchants
Administrative	117-5	Appeals Procedure by Which a Person May Contest the Authority of the Commission to Promulgate a Proposed Regulation.
	117-4	Procedure for Appeal to the Tax Commission from a County Board of Tax Appeals when the Statute Providing for such Appeal Fails to Specify the Manner in Which the Appeal is to be Made or the Grounds Therefor and Limits the Appeal to "Relief as Afforded by General Law".
	117-3	Appeal Procedure Before County Tax Board of Appeals.
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Income Tax	117-60	Nonresidents Having Income from a Business in this State Subject to Tax.
	117-75	When Sales Allocated to State of the Purchaser.

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	117-76	Nonresident Partners of a Partnership May File Single Return.
	117-77	Filing of a Consolidated Return for Two or More Corporations.
	117-79	Extension of Time for Filing and Tentative Returns Required.
	117-80	Application for Refund of Deceased.
	117-82	Income Tax in Another State Defined.
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	117-91.4	Withholding on Rentals Paid to Nonresidents.
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Video Game	117-191.1	Technical Standards for Video Game Machines.
	117-191.2	Technical Standards for Location Controller.
	117-191.3	Remote Shutdown of a Machine or Machines.

Text:

No text is necessary since the proposal is only repealing regulations no longer needed due to changes in the law.

Notice of Public Hearing:

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Judge Division at the Administrative Law Judge Division in the Edgar Brown Building on the Capitol Complex in Columbia, South Carolina for 11 a.m., Tuesday, October 2, 2001, if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the department to repeal several regulations that are no longer needed due to changes in the law. The department will be asking the Administrative Law Judge Division, in accordance with S.C. Code Ann. ' 1-23-111 (2000) issue a report that the proposal to repeal the regulations is needed and reasonable.

Comments:

All comments concerning this proposal should be mailed to the following address by Tuesday, September 4, 2001:

S.C. Department of Revenue
 Legislative Services - Mr. Meredith Cleland
 P.O. Box 125
 Columbia, South Carolina 29214

Preliminary Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Summary of the Preliminary Assessment Report:

The purpose of this proposal is to repeal regulations that are no longer needed due to changes in the law. The repeal of these regulations is needed to reduce taxpayer confusion that may result from having published regulations that are outdated due to changes in the law.

Preliminary Assessment Report:

Under the provisions of law governing the preliminary assessment report (Code Section 1-23-115), the SC Department of Revenue will address items (1) through (3) of Code Section 1-23-115(C) as follows:

1. The purpose of this proposal is to repeal regulations that are no longer needed due to changes in the law. The authority for repealing these regulations can be found in Code Section 12-4-320. The Department of Revenue will implement this proposal in the same manner as it implements all other regulations.
2. The proposal to repeal these regulations is needed to reduce any taxpayer confusion that may result from having published regulations that are outdated due to changes in the law. The proposal to repeal these regulations is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law.
3. This proposal to repeal these regulations will benefit taxpayers because it will reduce any taxpayer confusion by eliminating regulations that are outdated due to changes in the law. This regulation is cost effective for the same reasons.

Under the provisions of law governing the preliminary assessment report (Code Section 1-23-115), the SC Department of Revenue will address items (9) through (11) of Code Section 1-23-115(C) as follows:

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9. There is very little uncertainty associated with estimating the benefits of this regulation. All individuals would be similarly treated by these provisions.

10 . The proposed regulation would not have any effect on the environment and public health.

11. If the proposed regulation is approved, there would not be a detrimental effect on the environment and public health.

Filed: June 29, 2001, 4:20 pm

Document No. 2633
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110; 38-9-180; 1-23-10 et seq.
69-58. Privacy of Consumer Financial and Health Information

Emergency Situation:

This regulation is needed to protect South Carolina consumers from release of non-public financial and health information. The regulation implements the requirements of the Gramm-Leach-Bliley Act and federal regulations on the privacy of consumer information.

Text:

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- Section 2. Purpose and Scope
- Section 3. Rule of Construction
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- Section 6. Annual Privacy Notice to Customers Required
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- Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods
- Section 9. Revised Privacy Notices
- Section 10. Delivery

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- Section 12. Limits on Re-disclosure and Reuse of Nonpublic Personal Financial Information
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ARTICLE I. GENERAL PROVISIONS

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections 38-3-110 of the South Carolina Insurance Code and Title V of Pub. Law 102-106, the Gramm-Leach-Bliley Act.

Section 2. Purpose and Scope

A. Purpose.

This regulation governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:

- (1) Requires a licensee to provide notice to individuals about its privacy policies and practices;
- (2) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and
- (3) Provides methods for individuals to prevent a licensee from disclosing that information.

B. Scope.

This regulation applies to:

- (1) Nonpublic personal financial information about individuals who obtain products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and
- (2) All nonpublic personal health information.

C. Compliance.

A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Section 3. Rule of Construction

The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

A. “Affiliate” means any company that controls, is controlled by or is under common control with another company.

B. (1) “Clear and conspicuous” means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

- (i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;
- (ii) Uses short explanatory sentences or bullet lists whenever possible;
- (iii) Uses definite, concrete, everyday words and active voice whenever possible;
- (iv) Avoids multiple negatives;
- (v) Avoids legal and highly technical business terminology whenever possible; and
- (vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

- (i) Uses a plain-language heading to call attention to the notice;
- (ii) Uses a typeface and type size that are easy to read;
- (iii) Provides wide margins and ample line spacing;
- (iv) Uses boldface or italics for key words; and

(v) In a form that combines the licensee’s notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

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(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

C. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

D. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

E. (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(2) Examples.

(a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if:

(i) (I) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(II) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy;

and

(ii) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this regulation.

(e) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

(i) A participant of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(ii) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee;

(f) (i) The individuals described in Subparagraph (e)(i) through (ii) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).

(ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (ii) above, be deemed to be customers for purposes of this regulation.

(g) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(h) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

F. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

G. "Control" means:

(1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the director determines.

H. "Customer" means a consumer who has a customer relationship with a licensee.

I. (1) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) Examples.

(a) A consumer has a continuing relationship with a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(i) The consumer applies for insurance but does not purchase the insurance;

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction;

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

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(v) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(vi) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

J. "Director" means the director of the South Carolina Department of Insurance.

K. (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

L. (1) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

M. "Health care" means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(a) Relates to the physical, mental or behavioral condition of an individual; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

N. "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

O. "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

- (1) The past, present or future physical, mental or behavioral health or condition of an individual;
- (2) The provision of health care to an individual; or
- (3) Payment for the provision of health care to an individual.

P. (1) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state.

(2) (a) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(b) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and

(c) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

(3) (a) Subject to Subparagraph (b), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to Section [insert section] of this state's laws.

(b) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation provided:

(i) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this regulation, except as permitted by Section 15 or 16 of this regulation; and

(ii) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

R. (1) "Nonaffiliated third party" means any person except:

- (a) A licensee's affiliate; or

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(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

S. "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

T. (1) "Nonpublic personal financial information" means:

(a) Personally identifiable financial information; and

(b) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) Nonpublic personal financial information does not include:

(a) Health information;

(b) Publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or

(c) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) Examples of lists.

(a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

U. "Nonpublic personal health information" means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

V. (1) "Personally identifiable financial information" means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(2) Examples.

(a) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) Account balance information and payment history;

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(vii) Information from a consumer report.

(b) Information not included. Personally identifiable financial information does not include:

(i) Health information;

(ii) A list of names and addresses of customers of an entity that is not a financial institution; and

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

W. (1) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state or local law.

(2) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(a) That the information is of the type that is available to the general public; and

(b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(3) Examples.

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(a) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(b) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(c) Reasonable basis.

(i) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(ii) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

(2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A(2) of this section if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the licensee establishes a customer relationship.

(1) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:

(1) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.

E. Exceptions to allow subsequent delivery of notice.

(1) A licensee may provide the initial notice required by Subsection A(1) of this section within a reasonable time after the licensee establishes a customer relationship if:

(a) Establishing the customer relationship is not at the customer's election; or

(b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions.

(a) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(c) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Section 7D, the licensee may deliver its privacy notice according to Section 7D(3).

Section 6. Annual Privacy Notice to Customers Required

A. (1) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

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(2) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

62 B. (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) Examples.

(a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(c) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(d) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

D. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

Section 7. Information to be Included in Privacy Notices

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects;

(2) The categories of nonpublic personal financial information that the licensee discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 (and no other exception in Sections 15 and 16 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(6) An explanation of the consumer's right under Section 11A to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

(1) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

- (a) Information from the consumer;
- (b) Information about the consumer's transactions with the licensee or its affiliates;
- (c) Information about the consumer's transactions with nonaffiliated third parties; and
- (d) Information from a consumer reporting agency.

(2) Categories of nonpublic personal financial information a licensee discloses.

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

- (i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;
- (ii) Transaction information, such as information about balances, payment history and parties to the transaction; and
- (iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

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(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(a) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A(5) of this section if it:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A(2) of this section, as applicable; and

(b) States whether the third party is:

(i) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) A financial institution with whom the licensee has a joint marketing agreement.

(5) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(8), A(9), and Subsection B of this section.

(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-form initial notice with opt out notice for non-customers.

(1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(2) A short-form initial notice shall:

- (a) Be clear and conspicuous;
- (b) State that the licensee's privacy notice is available upon request; and
- (c) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

- (a) Provides a toll-free telephone number that the consumer may call to request the notice; or
- (b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

- (1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- (2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods

A. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 11A, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

- (a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- (b) That the consumer has the right to opt out of that disclosure; and
- (c) A reasonable means by which the consumer may exercise the opt out right.

(2) Examples.

(a) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

- (i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the

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information, as described in Section 7A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

(ii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(ii) Includes a reply form together with the opt out notice;

(iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(iv) Provides a toll-free telephone number that consumers may call to opt out.

(c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(i) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(ii) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

B. Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

C. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

D. Joint relationships.

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(b) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(b) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(c) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) It shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

F. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

G. Duration of consumer's opt out direction.

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

Section 9. Revised Privacy Notices

A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The licensee has provided to the consumer a new opt out notice;

(3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

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B. Examples.

(1) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(a) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(b) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(c) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

Section 10. Delivery

A. How to provide notices. A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

B. (1) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(a) Hand-delivers a printed copy of the notice to the consumer;

(b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

C. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

D. Oral description of notice insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

E. Retention or accessibility of notices for customers.

(1) For customers only, a licensee shall provide the initial notice required by Section 5A(1), the annual notice required by Section 6A, and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or

(c) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5A, 6A and 9A, respectively, by providing one notice to those consumers jointly.

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

A. (1) Conditions for disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(a) The licensee has provided to the consumer an initial notice as required under Section 5;

(b) The licensee has provided to the consumer an opt out notice as required in Section 8;

(c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

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(3) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(b) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

B. Application of opt out to all consumers and all nonpublic personal financial information.

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Re-disclosure and Reuse of Nonpublic Personal Financial Information

A. (1) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this regulation, the licensee's disclosure and use of that information is limited as follows:

(a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(c) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(2) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B. (1) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this regulation, the licensee may disclose the information only:

(a) To the affiliates of the financial institution from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(2) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(a) The licensee may use that list for its own purposes; and

(b) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this regulation, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this regulation, the third party may disclose the information only:

(1) To the licensee's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

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Section 13. Limits on Sharing Account Number Information for Marketing Purposes

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

(1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing

A. General rule.

(1) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with Section 5; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- (4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - (e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or
 - (f) In connection with:

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(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(ii) The transfer of receivables, accounts or interests therein; or

(iii) The audit of debit, credit or other payment information.

Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Record keeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(5) (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7) (a) To comply with federal, state or local laws, rules and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8F.

ARTICLE V. RULES FOR HEALTH INFORMATION

Section 17. When Authorization Required for Disclosure of Nonpublic Personal Health Information

A. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

B. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance And excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 18. Authorizations

A. A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:

- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
- (2) A general description of the types of nonpublic personal health information to be disclosed;
- (3) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

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(4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

B. An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

C. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article V at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

D. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Section 19. Authorization Request Delivery

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Section 17A.

Section 20. Relationship to Federal Rules

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services 45 CFR Part 160 (the "federal rule"), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this Article V.

Section 21. Relationship to State Laws

Nothing in this article shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 22. Protection of Fair Credit Reporting Act

Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of that Act.

Section 23. Violation

Persons violating the provisions of this regulation shall have committed an unfair trade practice and shall be subject to the penalties set forth in Chapter 57 of Title 38.

Section 24. Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 25. Effective Date

A. Effective date. This regulation is effective upon publication of the final regulation in the State Register. In order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of this regulation, the director has extended the time for compliance with this regulation until July 1, 2001. However, with respect to requirements related to the treatment of health information, the compliance deadline has been extended to coincide with the date the privacy regulation adopted by the U.S. Department of Health and Human Services becomes effective.

B. (1) Notice requirement for consumers who are the licensee's customers on the compliance date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

C. Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 14A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1–Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

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- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of Sections 7A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7A(5) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7—Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Filed: July 13, 2001, 4 pm

Document No. 2635

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
STATE BOARD OF DENTISTRY**

Chapter 39

Statutory Authority: 1976 Code Sections 40-15-40, 40-15-80 and 40-15-85.

Emergency Situation:

The State Board of Dentistry has determined that, in order to protect the dental health of patients in this State, it is necessary to clarify the type of authorization of the procedures to be performed pursuant to Section 40-15-85(B), which relates to the general supervision of dental hygienists practicing in school settings, hospitals, and other facilities and institutions, pursuant to Sections 40-15-80(B) and (C). The Board believes that the phrase, "authorized the procedures to be performed" used in Section 40-15-85(B), requires the dentist to perform a clinical examination of the patient and determine the need for any specific treatment, and issue a written work order for the procedure(s) to be performed by the dental hygienist under general supervision. The State Board has determined that the public health requires immediate promulgation of this regulation. The Board has received initial complaints of professional misconduct and has determined that without this regulation, dental hygienists are in a position to apply topical fluoride and perform the application of sealants and oral prophylaxis before a proper diagnosis of cavities and other serious dental health conditions have been properly assessed by a dentist.

Text:

39-18. Standards for Dentists to Authorize Certain Procedures to be Performed by Dental Hygienists Under General Supervision.

(A) In order for a licensed dentist to authorize a procedure to be performed by a dental hygienist under general supervision, the supervising dentist must have clinically examined the patient and actually determined the need for any specific treatment. Before treatment may be performed by a dental hygienist, the supervising dentist must provide a written work order for the procedure(s) to be performed by the dental hygienist. A clinical examination

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must be conducted by the supervising dentist for each patient not more than forty-five (45) days prior to the date the dental hygienist is to perform the procedure for the patient. Supervising dentists may only authorize licensed dental hygienists to apply topical fluoride and perform the application of sealants and oral prophylaxis under general supervision in accordance with Sections 40-15-80(B) and (C).

(B) The authorization form must contain the following information:

- 1) identification of patient by name;
- 2) signature of the parent/guardian giving permission for treatment of minor patient, if applicable;
- 3) signature and license number of the supervising dentist, and date of patient examination by the dentist;
- 4) procedure(s) authorized by the supervising dentist;
- 5) signature and license number of the dental hygienist performing the procedure(s), and
- 6) confirmation whether or not patient is an active patient of another dentist.
- 7) A copy of each authorization form must be retained in a file by the supervising dentist for a period of three (3) years, and must be made available immediately upon the request of the Board or its representative.

(C) When the supervising dentist is not to be present during the dental hygienist appointment, patients or their parents/legal guardian, if applicable, must be informed in writing prior to the dental hygiene appointment that no dentist will be present and, therefore, no examination by a dentist will be conducted at that appointment.

(D) The dental hygienist must comply with all written protocols for emergencies established by the supervising dentist, and must also comply with written protocols/standing orders that the supervising dentist establishes. At all times, the dental hygienist is under the supervision and full responsibility of the supervising dentist. General supervision does not preclude the use of direct supervision when in the professional judgment of the dentist such supervision is necessary to meet the individual needs of the patient.

Statement of Need and Reasonableness:

The need for immediate action is required in order to protect patients in this State from further injury resulting from the performance of procedures by dental hygienists without prior examination and determination by a licensed dentist as to the necessity and appropriateness of any specific treatment. The Board is aware of specific allegations of substandard care in similar situations that indicate the need for immediate promulgation, regardless of whether or not such allegations might ultimately be found true in particular instances.

DESCRIPTION OF REGULATION:

Purpose: The purpose of this regulation is to further define the term “authorized the procedures to be performed” used in Section 40-15-85(B) as it relates to the general supervision of dental hygienists practicing in school settings, hospitals, and other facilities and institutions, pursuant to Sections 40-15-80(B) and (C). “Authorized the procedures to be performed” requires the dentist to perform a clinical examination of the patient and determine the need for any specific treatment, and issue a written work order for the procedure(s) to be performed by the dental hygienist under general supervision.

Legal Authority: 1976 Code Title 40, Chapter 15, Section 40; Title 40, Chapter 15, Section 80; Title 40, Chapter 15, Section 85.

Plan for Implementation: Administratively, the Board will notify all licensees through written and oral communication and by the promulgation of a permanent regulation in accordance with the S.C. Administrative Procedures Act.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS THEREIN AND EXPECTED BENEFITS: The need to immediately establish this provision is to protect patients in this State from further injury resulting from the performance of procedures by dental hygienists without prior examination and determination by a licensed dentist as to the necessity and appropriateness of any specific treatment. The Board is aware of specific allegations of substandard care in similar situations that indicate the need for immediate promulgation, regardless of whether or not such allegations might ultimately be found true in particular instances.

DETERMINATION OF COSTS AND BENEFITS: No additional costs will be incurred by the State or any political subdivision.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties of estimates concerning this regulation.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: This regulation will have no effect on the environment. The public health of this State will be improved by clarifying the circumstances under which dentists may authorize certain procedures to be performed by dental hygienists in this State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: This regulation will have no detrimental effect on the environment. The public health of this State will be adversely affected if the regulation is not implemented due to continued ambiguity in the circumstances under which dentists may authorize certain procedures to be performed by dental hygienists in this State.

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Document No 2591
BOARD OF EDUCATION
CHAPTER 43

Statutory Authority S.C. Code Ann. Section 59-30-10 (f); 59-43-10, et seq. and Workforce Investment Act of 1998 (WIA P.I. 105 220)

43-237.1. Adult Education Program

Synopsis: In 1998, the federal government passed the Workforce Investment Act. The Act requires that South Carolina must review and amend current regulations to reflect changes required by federal law. The State Board of Education Regulation 43-237.1, Adult Education Program was amended in 1994 by the State Board of Education.

Instructions: Amend and replace in its entirety Regulation 43-237.1, Adult Education Program in Chapter 43.

Text:

43-237.1. Adult Education Program

A. Adult Education Program

The program of adult education is provided for adults who want to acquire a basic education, to prepare for the tests of General Educational Development (GED), to develop literacy skills, to obtain the knowledge and skills necessary for employment and self-sufficiency, or to complete the requirements for a state high school diploma. Enrollment in the program of adult education for a state high school diploma shall be limited to adults who are residents in South Carolina.

B. Basic Education Program

The curriculum of an adult basic education program shall include organized and systematic instruction in reading, writing, and speaking the English language, numeracy, problem solving, English-language acquisition, and other literacy skills.

Each adult education program shall provide instruction at the various levels as defined in the National Reporting System for Adult Education (NRS).

Cooperation with other agencies and programs is needed in order for public education to provide for the adult population's variety of needs. A school district with the written approval of the Office of Adult and Community Education may contract with another school district in South Carolina for the operation of the adult program. Diploma programs must have written approval from the Office of Adult and Community Education.

C. Adult Education Facilities

(1) Buildings shall be adequate in size and arrangement.

(2) Buildings shall be kept clean and comfortable.

(3) Each room shall be designed and equipped to serve specific purposes. Adequate lighting, ventilation, and heating shall be provided in all utilized areas.

(4) All operating adult school facilities shall comply with the safety regulations prescribed by the State Fire Marshal and with the sanitation and health regulations prescribed by the State Board of Health.

D. Workplace Trainers

Every adult education contextual workplace basic skills trainer and every nonacademic workplace trainer must either hold at least a bachelor's degree or have a minimum of four years of documented experience as an industry trainer or possess formal certification in the specific content area to be taught and be certified as a workplace trainer through the State Department of Education, Office of Adult and Community Education.

E. Health Certificates

All personnel shall be screened for tuberculosis as required by (S.C. Code Ann. §§ 4429-150, 160 (1976). Guidelines for screening of school employees for tuberculosis are available in all county health departments.

F. In-Service Education

Each adult education director shall develop and implement an organized in-service education program for professional personnel. Staff members should be involved in the planning and evaluation of these activities, which should focus on the problems, needs, purposes, and goals of the adult education program. A copy of the in-service education plan shall be made available to the adult education supervisor upon request.

G. Length of School Term

Each approved adult education high school diploma program shall meet a minimum of thirty (30) weeks and shall include a minimum of sixty (60) hours of instruction for each unit of credit (exclusive of registration, exams, issuing materials, etc.).

H. Supervision of Instruction

Supervision and improvement of the adult education instructional program is the direct responsibility of the adult education director.

I. Allocations to School Districts

Funds shall be allocated to school districts on a per pupil basis as determined by the adult student enrollment as of June 30 each year.

1. General Program Support

Using actual allocations, school districts shall develop a budget that includes the following allowable expenses: directors' salaries, teacher salaries, instructional materials and supplies, "other costs," employee benefits, and indirect costs. These expenditures shall be approved by the Office of Adult and Community Education. Disbursements for teacher salaries, instructional materials, equipment and supplies, and other costs shall be paid at a rate determined by the local board of education.

2. Employee Benefits

Federal and state funds may be used for payment of employee benefits for those employees whose salaries are paid with federal and state funds.

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J. Allocations to Other Entities

Allocations to other entities that are deemed eligible under the Workforce Investment Act will be made on the same formula basis as school districts.

K. Allocations to Technical Colleges and Other Eligible Agencies

Allocations to technical colleges offering adult education programs shall be based on the enrollment of students who have received at least twelve (12) hours of adult education instruction. The end-of-the-year report shall be used as the basis for determining the amount to be allocated.

L. Base Amount

After the costs of the State Office of Adult and Community Education operations, local directors' salaries, leadership funds, other agencies' funds, and entities' allocations are subtracted from the state and federal grants, the remainder shall be distributed through a formula that considers the number of participants and the number of hours of student attendance of adult education programs. This formula will produce the base amount per student.

M. Nonfundable Classes

No class or course for adults that is recreational or social shall be eligible for funding; therefore, enrollment in such classes shall not be counted for funding purposes, and no state or federal adult education funds may be used to support such classes. This standard applies to physical education and physical fitness classes. Only the classroom portion of driver education when the course is offered for high school credit shall be funded with state and federal adult education funds.

N. Enrollment Count

Adult students shall be counted for enrollment only once during a fiscal year in the same program. Only students who have been instructed a minimum of twelve (12) hours in adult education classes taught by certified adult education instructors or by volunteers shall be counted.

O. Advance Payment

Upon request, programs may receive 25 percent of their allocations as an advance. This advance will be recouped as claims are submitted. No advances will be made prior to the final approval of a proposal.

P. Quarterly Claims

The Program Enrollment Report (SDE-COL-02) and the Adult Education Expenditure Report forms shall be verified by the local adult education director, the district superintendent, and the Office of Adult and Community Education. These forms must be submitted quarterly to the Office of Adult and Community Education for reimbursement.

Q. Reallocation of Funds

Program reports are reviewed quarterly by the staff of the Office of Adult and Community Education to ascertain if expenditures are consistent with allocations. In February of each year the utilization of allocations are evaluated, and districts are requested to release any funds that will not be utilized. Released funds are then allocated to districts that have programs for which documentation is submitted to demonstrate the need for additional funds.

R. Local Funds

Local funds for the adult education program are expended at the discretion of the local school officials.

S. Project Proposals

Project proposals define the plans and methods by which the program will operate and include a needs assessment of the local community served by the program. No reimbursements are made prior to the final approval of a proposal.

T. Indirect Costs

If a school district chooses to claim indirect costs, the restricted cost rate is applicable to adult education federal funds.

U. Travel Reimbursement

When travel expenses are reimbursed through the Office of Adult and Community Education, the state employee travel regulation will apply.

V. Membership

The fees for memberships in professional organizations are disallowed as expenditures from state or federal adult education funds.

Document No. 2622
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: S.C. Code Section 48-1-50

R.61-62.1, *Definitions and General Requirements*

Synopsis:

Pursuant to S.C. Code Section 48-1-50, the South Carolina Department of Health and Environmental Control (Department) has amended R.61-62.1, *Definitions and General Requirements*, and the South Carolina Air Quality Implementation Plan, by adding new Section V to R.61-62.1 to address “Credible Evidence.” This amendment will ensure that owners or operators of facilities with air pollutant emissions may use enhanced monitoring (or other monitoring approved for the source pursuant to R.61-62.70) and any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for compliance certification purposes. This amendment will also ensure that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan or standard.

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This amendment conforms R.61-62.1 to Federal regulations pursuant to the requirements of the “Credible Evidence Revisions” (62 FR 8314) promulgated in the *Federal Register* on February 24, 1997. These amendments do not require legislative review.

Instructions:

Amend R.61-62.1, *Definitions and General Requirements*, by adding new Section V - Credible Evidence.

Text of Amendment:

Section V - Credible Evidence

A. The Department promulgated Regulation 61-62, *Air Pollution Control Regulations and Standards*, and developed the South Carolina Air Quality Implementation Plan to provide enforceable emission limitations, to establish an adequate enforcement program, to require owners or operators of stationary sources to monitor emissions, submit periodic reports of such emissions and maintain records as specified by various regulations and permits, and to evaluate reports and records for consistency with the applicable emission limitation or standard on a continuing basis over time. The monitoring data collected and records of operations would serve as the basis for a source to certify compliance, and could be used by the Department as direct evidence of an enforceable violation of the underlying emission limitation or standard.

B. The purpose of this section is:

1. To clarify the statutory authority of Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina Air Quality Implementation Plan, whereby non-reference test data and various kinds of information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards.

2. To eliminate any potential ambiguity regarding language that has been interpreted to provide for exclusive reliance on reference test methods as the means of certifying compliance with various emission limits.

3. To curtail language that limits the types of testing or monitoring data that may be used for determining compliance and for establishing violations.

C. The following is applicable in the determination of non-compliance by the Department or for compliance certification by the owners or operators of stationary sources.

1. Enforcement - Consistent with South Carolina’s Environmental Audit Privilege and Voluntary Disclosure Act of 1996 and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

2. Compliance Certifications - Consistent with South Carolina’s Environmental Audit Privilege and Voluntary Disclosure Act of 1996 and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-62.1, *Definitions and General Requirements*, of R.61-62, *Air Pollution Control Regulations and Standards*.

Purpose: The Department has amended Regulation 61-62.1, *Definitions and General Requirements*, and the South Carolina Air Quality Implementation Plan (SIP) to ensure that owners or operators of facilities with air pollutant emissions may use enhanced monitoring (or other monitoring approved for the source pursuant to R.61-62.70) and any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for compliance certification purposes. This amendment will also ensure that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan or standard.

Legal Authority: The legal authority for R.61-62.1, *Definitions and General Requirements*, and the South Carolina Air Quality Implementation Plan, is section 48-1-50, S.C. Code of Laws.

Plan for Implementation: This amendment was adopted by the Board of Health and Environmental Control on June 14, 2001, and will take effect upon publication in the South Carolina *State Register*.

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

On October 22, 1993, the United States Environmental Protection Agency (USEPA) published a *Federal Register* notice proposing an “Enhanced Monitoring Program Rule” (58 FR 54648). The USEPA solicited public comment on a proposal to amend 40 CFR Parts 51, 52, 60 and 61 to eliminate language that has been read to provide for exclusive reliance on reference test methods as the means of demonstrating compliance with various emission limits under the Clean Air Act (CAA). These proposed revisions, generally referred to as the “credible evidence” revisions, were designed to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data’s use for compliance certifications under Section 114 and Title V of the CAA.

On May 23, 1994, the USEPA issued a SIP Call to all states pursuant to Section 110(k)(5) of the CAA, requiring each state to revise its SIP on the basis that it is substantially inadequate to comply with the requirements of sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the CAA. The SIP Call was issued based on the statute since the enhanced monitoring rules had not yet been finalized. The purpose of the SIP Call was to require each state to revise its SIP to allow for the use of “enhanced monitoring” as a means of establishing compliance and “any credible evidence” to prove violations. The USEPA believes that the existing South Carolina Air Quality Implementation Plan is inadequate because it may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and for establishing violations.

In response to comments received, the USEPA decided to suspend development of the original Enhanced Monitoring Program Rule and separated the proposed rule into two parts, the “compliance assurance monitoring” (CAM) rule and the “any credible evidence” rule, to serve the same statutory goals as the original proposal. On February 24, 1997, the USEPA promulgated a final rule in the *Federal Register*, “Credible Evidence Revisions” (62 FR 8314), to clarify statutory authority whereby various kinds of information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards. The USEPA, upon promulgation of this final rule, initiated action to continue the SIP Call.

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The Department submitted a letter to the USEPA on March 15, 1994, referencing regulations in the approved SIP that provide for the utilization of alternate testing and monitoring methods for determining compliance and for establishing violations of the underlying emission limit or standard. In a reply dated May 6, 1998, the USEPA stated that the South Carolina Air Pollution Control Regulations and Standards contain some flexibility to allow the utilization of alternate test methods, but questioned whether the regulations contained the necessary level of specificity to allow these test methods to be used to generate “any credible evidence” for either compliance certification or for enforcement purposes. In a letter dated April 12, 2000, the USEPA stated that credible evidence language proposed by the Department in earlier correspondence would be acceptable if certain amendments to “South Carolina’s Environmental Audit Privilege and Voluntary Disclosure Act of 1996” (Audit Law) were approved by the State Legislature. The USEPA recommended that the State delay making a decision regarding the SIP amendment until the status of the Audit Law became certain. The amendments to the Audit Law were approved by the State Legislature on April 20, 2000 and signed by the Governor on May 1, 2000.

The Department has amended R.61-62.1 to resolve this issue. This action will conform R.61-62.1 to Federal regulations. The amendment is limited in scope to the revisions named herein.

DETERMINATION OF COSTS AND BENEFITS: There will be no increased cost to the State or its political subdivisions resulting from this amendment, nor will there be increased costs to the regulated community.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: This amendment clarifies statutory authority whereby various kinds of information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards, without causing any deterioration of the ambient air quality in South Carolina.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: None. The credible evidence revisions merely address an evidentiary issue and will not serve to affect the stringency of existing emission standards.

Document No. 2541

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: Section 44-7-250 and 260(A)(6), 1976 Code of Laws

R.61-84. Standards For Licensing Community Residential Care Facilities

Synopsis:

This amendment will extricate applicability to facilities that treat those with chemical dependency and addiction from R.61-84. Concurrently, the Department has proposed to consolidate the standards for all of the alcohol and drug abuse treatment facilities which DHEC now licenses into one regulation(R.61-93); alcohol and drug abuse treatment programs within existing hospitals will continue to be licensed under the hospital regulation (R.61-16). The Department proposes to amend R.61-84 to update and enhance the regulations. In addition, this amendment will: update and expand definitions/interpretations; clarify licensing change requirements; update licensing fee amounts; describe inspection reporting requirements; add reference to Department consultations; update and clarify and update classification of standards and enforcement action procedures; update staffing standards; update physical plant/structural requirements; add quality improvement standards; reword sections related to care and services; reword sections regarding resident record content and maintenance; update infection control and tuberculosis screening requirements; update medication management requirements; update meal service requirements; add reporting requirements; enhance resident rights/assurances requirements; reword sections regarding resident record

content and maintenance; expand/update emergency preparedness requirements; enhance fire prevention requirements and add a severability clause. The proposed amendment will rewrite the regulation in its entirety.

The Notice of Drafting for this amendment was published in the *State Register* on February 25, 2000.

Discussion of Proposed Revisions: Regulation was revised in its entirety.

SECTION 100 includes definitions, references, and licensing requirements.

SECTION 200 addresses methods used in enforcing regulations, i.e., investigations, inspections, and consultations.

SECTION 300 references the types of enforcement actions that may be taken by DHEC, the classifications of violations, range of penalty amounts, and the appeal process.

SECTION 400 includes requirements that the agency maintain policies and procedures that include descriptions of how the standards in this regulation will be achieved.

SECTION 500 addresses general staff requirements including staff training, qualifications, and numbers to comply with applicable federal, state, and local laws and in accordance with professional organizational standards; requirements that direct care staff have no prior conviction of child/adult abuse, neglect, or mistreatment; and staff health status.

SECTION 600 provides reporting requirements to DHEC.

SECTION 700 addresses resident record content and maintenance.

SECTION 800 includes admission/retention information.

SECTION 900 provides requirements for care and services to residents, the compliance with laws pertaining to fiscal management, recreation, transportation, safety precautions/restraints, and discharge/transfer.

SECTION 1000 includes facility identification of resident rights and assurances.

SECTION 1100 addresses resident physical examination.

SECTION 1200 addresses medication management, i.e., administration, storage.

SECTION 1300 addresses meal service.

SECTION 1400 addresses emergency procedures/disaster preparedness.

SECTION 1500 includes fire prevention, i.e., arrangements for fire department response/protection, tests and inspections, fire response training, and fire drills.

SECTION 1600 addresses facility maintenance.

SECTION 1700 describes the requirements for infection control and environment, i.e., staff practices, tuberculin screening, housekeeping, infectious waste, pets, and clean/soiled linen and clothing.

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SECTION 1800 provides a description of the essential elements of the quality improvement program.

SECTION 1900 addresses design and construction.

SECTION 2000 addresses general construction requirements.

SECTION 2100 includes hazardous elements of construction.

SECTION 2200 addresses fire protection equipment and systems.

SECTION 2300 includes standards for exits.

SECTION 2400 addresses water supply/hygiene.

SECTION 2500 includes electrical requirements.

SECTION 2600 includes heating, ventilation, and air conditioning.

SECTION 2700 addresses specifics for the physical plant, i.e., resident rooms and floor area, bathrooms/restrooms, resident care unit and station, doors, elevators, corridors, ramps, screens, handrails/guardrails, landings, windows, janitor's closet, storage areas, telephone service, location, and outdoor area.

SECTION 2800 adds a severability clause which indicates that if a court of competent jurisdiction determines that part of the regulation is invalid or otherwise unenforceable then the remainder of the regulation will not be affected and will still be in force.

SECTION 2900 includes "general" that refers to any conditions that have not been addressed in the regulation.

Instructions: Replace R.61-84 in its entirety by this amendment.

Text:

R.61-84 – Standards for Licensing Community Residential Care Facilities

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101. Definitions

For the purpose of this regulation, the following definitions shall apply:

A. **Activities of Daily Living (ADL).** Those personal functions performed by an individual in the course of a day that include, but are not limited to, walking; bathing; shaving; brushing teeth; combing hair; dressing; eating; getting in or getting out of bed; toileting; ambulating; doing laundry; cleaning room; managing money; shopping; using public transportation; writing letters; making telephone calls; obtaining appointments; administration of medication; and other similar activities.

B. **Administering Medication.** The direct application of a single dose of a medication to the body of a resident by injection, ingestion, or any other means.

C. **Administrator.** The individual designated by the licensee to have the authority and responsibility to manage the facility, is in charge of all functions and activities of the facility, and is appropriately licensed as a community residential care facility administrator by the S.C. State Board of Long Term Health Care Administrators.

D. **Adult.** A person 18 years of age or older.

E. **Advanced Practice Registered Nurse.** An individual who has Official Recognition as such by the S.C. Board of Nursing.

F. **Alzheimer's Special Care Unit or Program.** A facility or area within a facility providing a secure, segregated special program or unit for residents with a diagnosis of probable Alzheimer's disease and/or related dementia to prevent or limit access by a resident outside the designated or separated areas, and that advertises, markets, or otherwise promotes the facility as providing specialized care/services for persons with Alzheimer's disease and/or related dementia or both.

G. **Annual.** Once each 365 days.

H. **Architect.** An individual currently registered as such by the S.C. State Board of Architectural Examiners.

I. **Assessment.** A procedure for determining the nature and extent of the problem(s) and needs of a potential resident/resident to ascertain if the facility can adequately address those problems, meet those needs, and to secure information for use in the development of the individual care plan. Included in the process are an evaluation of the physical, emotional, behavioral, social, spiritual, nutritional, recreational, and, when appropriate, vocational, educational, legal status/needs of a potential resident/resident. Consideration of each resident's needs, strengths, and weaknesses shall be included in the assessment.

J. **Authorized Healthcare Provider.** An individual authorized by law and currently licensed in S.C. to provide specific treatments, care, or services to residents. Examples of individuals who may be authorized by law to provide the aforementioned treatment/care/services may include, but are not limited to, advanced practice registered nurses, physician's assistants.

K. **Boarding House.** A business/entity which provides room and board to an individual(s) and which does not provide a degree of personal care to more than one individual.

L. **Community Residential Care Facility (CRCF).** A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement. Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a

beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as “assisted living “ provided they meet the above definition of community residential care facility.

M. Controlled Substance. A medication or other substance included in Schedule I, II, II, IV, and V of the Federal Controlled Substances Act and the South Carolina Controlled Substances Act.

N. Consultation. A visit to a licensed facility by individuals authorized by the Department to provide information to facilities to enable/encourage facilities to better comply with the regulations.

O. Dentist. An individual currently licensed to practice dentistry by the S.C. Board of Dentistry.

P. Dietitian. A person who is registered by the Commission on Dietetic Registration.

Q. Department. The S.C. Department of Health and Environmental Control (DHEC).

R. Designee. A staff member designated by the administrator to act on his/her behalf.

S. Direct Care Staff Member/Direct Care Volunteer. Those individuals who provide assistance with activities of daily living to residents.

T. Discharge. The point at which residence in a facility is terminated and the facility no longer maintains active responsibility for the care of the resident.

U. Dispensing Medication. The transfer of possession of one or more doses of a drug or device by a licensed pharmacist or person as permitted by law, to the ultimate consumer or his/her agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by a resident.

V Existing Facility. A facility which was in operation and/or one which, as approved by the Department, began the construction or renovation of a building, for the purpose of operating the facility, prior to the promulgation of this regulation. The licensing standards governing new facilities apply if and when an existing facility is not continuously operated and licensed under this regulation.

W. Facility. A community residential care facility licensed by the Department.

X. Health Assessment. An evaluation of the health status of a staff member/volunteer by a physician, other authorized healthcare provider, or registered nurse, pursuant to written standing orders and/or protocol approved by a physician’s signature. The standing orders/protocol shall be reviewed annually by the physician, with a copy maintained at the facility.

Y. Individual Care Plan (ICP). A documented regimen of appropriate care/services or written action plan prepared by the facility for each resident based on assessment data and which is to be implemented for the benefit of the resident.

Z. Initial License. A license granted to a new facility.

AA. Inspection. A visit by authorized individuals to a facility or to a proposed facility for the purpose of determining compliance with this regulation.

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BB. Investigation. A visit by authorized individuals to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to this regulation.

CC. Legend Drug.

1. A drug when, under federal law, is required, prior to being dispensed or delivered, to be labeled with any of the following statements:

- a. "Caution: Federal law prohibits dispensing without prescription";
- b. "Rx only" or;

2. A drug which is required by any applicable federal or state law to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only;

3. Any drug products considered to be a public health threat, after notice and public hearing as designated by the S.C. Board of Pharmacy; or

4. Any prescribed compounded prescription is a legend drug within the meaning of the Pharmacy Act.

DD. License. The authorization to operate a facility as defined in this regulation and as evidenced by a current certificate issued by the Department to a facility.

EE. Licensed Nurse. A person to whom the S.C. Board of Nursing has issued a license as a registered nurse or licensed practical nurse.

FF. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care/services at a facility and with whom rests the ultimate responsibility for compliance with this regulation.

GG. Local Transportation. The maximum travel distance the facility shall undertake, at no cost to the resident, to secure/provide health care for residents. Local transportation shall be based on a reasonable assessment of the proximity of customary health care resources in the region, e.g., nearest hospitals, physicians and other health care providers, and appropriate consideration of resident preferences and needs.

HH. Medication. A substance that has therapeutic effects, including, but not limited to, legend, nonlegend, herbal products, over-the counter, nonprescription, vitamins, and nutritional supplements, etc.

II. New Facility. All buildings or portions of buildings, new and existing building(s), that are:

1. Being licensed for the first time;
2. Providing a different service that requires a change in the type of license;
3. Being licensed after the previous licensee s license has licensee has voluntarily surrendered the license and the facility has not continuously operated.

JJ. Nonlegend Drug. A drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws of this State and the federal government.

KK. Peak Hours. Those hours from 7 a.m. to 7 p.m., or as otherwise determined by the facility, which shall be justifiable and reasonable, and in consideration of residents and safety of the facility.

LL. Personal Care. The provision by the staff members/direct care volunteers of the facility of one or more of the following services, as required by the individual care plan or orders by the physician or other authorized healthcare provider or as reasonably requested by the resident, including:

1. Assisting and/or directing the resident with activities of daily living;
2. Being aware of the resident's general whereabouts, although the resident may travel independently in the community;
3. Monitoring of the activities of the resident while on the premises of the residence to ensure his/her health, safety, and well-being.

MM. Personal Monies. All monies which are available to the resident for his/her personal use, including family donations.

NN. Pharmacist. An individual currently registered as such by the S.C. Board of Pharmacy.

OO. Physical Examination. An examination of a resident by a physician or other authorized healthcare provider which addresses those issues identified in Section 1101 of this regulation.

PP. Physician. An individual currently licensed to practice medicine by the S.C. Board of Medical Examiners.

QQ. Physician's Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.

RR. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care/services, identify the ways to improve its performance, and take actions that result in higher quality of care/services for the facility's residents.

SS. Ramp. An inclined accessible route that facilitates entrance to or egress from or within a facility.

TT. Related/Relative. This degree of kinship is considered "within the third degree of consanguinity," e.g., a spouse, son, daughter, sister, brother, parent, aunt, uncle, grandchild, niece, nephew, grandparent, great-grandparent, grandchild, or great-grandchild.

UU. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a 36-month period. The time-period determinant of repeat violation status is applicable in instances when there are ownership changes.

VV. Resident. Any individual, other than staff members/volunteers or owner and their family members, who resides in a facility.

WW. Resident Room. An area enclosed by four ceiling high walls that can house one or more residents of the facility.

XX. Respite Care. Short-term care (a period of six weeks or less) provided to an individual to relieve the family members or other persons caring for the individual.

YY. Responsible Party. A person who is authorized by law to make decisions on behalf of a resident, to include, but not be limited to, a court-appointed guardian (or legal guardian as referred to in the Resident's Bill of Rights) or conservator, or health care or other durable power of attorney.

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ZZ. Restraint A device which inhibits the movement of a resident, e.g., posey vest, geri-chair.

AAA. Revocation of License. An action by the Department to cancel or annul a facility license by recalling, withdrawing, or rescinding its authority to operate.

BBB. Sponsor. The public agency or individual involved in one or more of the following: protective custody authorized by law, placement, providing ongoing services, or assisting in providing services to a resident(s) consistent with the wishes of the resident or responsible party or specific administrative or court order.

CCC. Staff Member. An adult, to include the administrator, who is a compensated employee of the facility on either a full or part-time basis.

DDD. Suspend License. An action by the Department requiring a facility to cease operations for a period of time or to require a facility to cease admitting residents, until such time as the Department rescinds that restriction.

EEE. Volunteer. An adult who performs tasks at the facility at the direction of the administrator without compensation.

102. References

A. The following Departmental publications are referenced in these regulations:

1. R.61-20, Communicable Diseases;
2. R.61-25, Retail Food Establishments;
3. R.61-51, Public Swimming Pools;
4. R.61-58, State Primary Drinking Water Regulations;
5. R.61-67, Standards for Wastewater Facility Construction;
6. R.61-105, S.C. Infectious Waste Management Regulations;
7. S.C. Guidelines for Prevention and Control of Antibiotic Resistant Organisms.

B. The following non-Departmental publications are referenced within this regulation:

1. Standard Building Code;
2. National Fire Protection Association (NFPA) 101, Life Safety Code, and other NFPA standards, as applicable;
3. National Electrical Code;
4. Standard Plumbing Code;
5. Standard Mechanical Code;
6. Standard Gas Code;

7. State Fire Marshal Regulations;
8. American National Standards Institute (ANSI) 117.1, Specifications for Making Building and Facilities Accessible to and Useable by the Physically Handicapped;
9. Underwriters Laboratories - Fire Resistance Directory;
10. Underwriters Laboratories - Building Materials List;
11. Occupational Safety and Health Act of 1970 (OSHA);
12. Omnibus Adult Protection Act;
13. Alzheimer's Special Care Disclosure Act;
14. Food and Nutrition Board of the National Research Council, National Academy of Sciences;
15. National Sanitation Federation;
16. Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities;
17. U.S. Pharmacopoeia.

C. The Department shall enforce new laws that may change the above-noted standards and at its discretion adopt revisions to the above noted references.

103. License Requirements (II)

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise/market) as a community residential care facility/assisted living facility in S.C. without first obtaining a license from the Department. Admission of residents prior to the effective date of licensure is a violation of Section 44-7-260(A)(6) of the S.C. Code of Laws, 1976, as amended. When it has been determined by the Department that room, board, and a degree of personal care to two or more adults unrelated to the owner is being provided at a location, and the owner has not been issued a license from the Department to provide such care, the owner shall cease operation immediately and ensure the safety, health, and well-being of the occupants. Current/previous violations of the S.C. Code and/or Department regulations may jeopardize the issuance of a license for the facility or the licensing of any other facility, or addition to an existing facility which is owned/operated by the licensee. The facility shall provide only the care/services it is licensed to provide pursuant to the definitions in Sections 101. L and 101.LL of this regulation. (I)

B. Compliance. An initial license shall not be issued to a proposed facility that has been not previously and continuously licensed under Department regulations until the licensee has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility/activity licensed by the Department makes application for another facility or increase in licensed bed capacity, the currently licensed facility/activity shall be in substantial compliance with the applicable standards prior to the Department issuing a license to the proposed facility or amended license to the existing facility. A copy of the licensing standards shall be maintained at the facility and accessible to all staff members/volunteers. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

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C. Compliance with Structural Standards. Facilities licensed at the time of promulgation of this regulation (existing facilities), and proposed facilities for which the licensee has received written approval from the Department to construct the proposed facility:

1. Shall be allowed to continue utilizing the previously-licensed structure without modification. Facilities are not required to modify square footage of resident rooms, sitting areas, and maximum number of beds in resident rooms, or provide a private resident room except that facilities that have resident rooms with five or more licensed beds shall reduce the maximum number of beds per room to no more than four within 12 months from the date of promulgation of this regulation.

2. Shall comply with the remainder of the standards within this regulation.

D. Compliance with Structural Standards upon Change of Ownership. When changes in ownership occur, the new licensee shall, through coordination with the Department s Division of formulate a plan for the facility to be in compliance with current building and fire and life safety codes within 24 months of the date of the ownership change, unless specific standards are exempted by the Department. Facilities are not required to modify square footage of resident rooms and maximum number of beds in resident rooms, except that those facilities which have resident rooms with five or more licensed beds shall reduce the maximum number of beds per room to no more than four within 12 months from the date of ownership change.

E. Licensed Bed Capacity. No facility that has been authorized to provide a set number of licensed beds, as identified on the face of the license, shall exceed the bed capacity. No facility shall establish new care/services or occupy additional beds or renovated space without first obtaining authorization from the Department. Beds for use of staff members/volunteers are not included in the licensed bed capacity number, provided such beds and locations are so identified and used exclusively by staff members/volunteers. (I)

F. Persons Received in Excess of Licensed Bed Capacity. No facility shall receive for care or services persons in excess of the licensed bed capacity, except in cases of justified emergencies. (I)

EXCEPTION: In the event that the facility temporarily provides shelter for evacuees who have been displaced due to a disaster, then for the duration of that emergency, provided the health, safety, and well-being of all residents are not compromised, it is permissible to temporarily exceed the licensed capacity for the facility in order to accommodate these individuals (See Section 606).

G. Living Quarters for Staff Members. In addition to residents, only staff members, volunteers, or owners of the facility and members of the owner's immediate family may reside in facilities licensed under this regulation. Resident rooms shall not be utilized by staff members/family/volunteers nor shall bedrooms of staff members/family/volunteers be utilized by residents.

H. Issuance and Terms of License.

1. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, services, personal safety, fire safety, or the well-being of any resident or occupant of a facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State.

4. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but which are not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, e.g., interstate highways, shall not be considered as dividing otherwise adjoining or contiguous property.

6. Separate licenses are not required, but may be issued, for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

7. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

8. Facilities may furnish respite care provided compliance with the standards of this regulation is met.

I. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in S.C.. The Department shall determine if names are similar. If the facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

J. Application. Applicants for a license shall submit to the Department a completed application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes both the applicant's oath assuring that the contents of the application are accurate/true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two of its officers; or in the case of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his/her address is different from that of the facility, the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. Corporations or partnerships shall be registered with the S.C. Office of the Secretary of State.

K. Licensee. A licensee shall submit original letters of reference from three persons not related to, nor employed by the licensee, that attest to the licensee's reputable and responsible character, and the financial ability and competence to operate a community residential care facility (if owner is a corporation, then references for the chief executive officer of the corporation; if a partnership, then references for each partner owning five percent or more). One of the references shall be the result of a criminal background check with S.C. State Law Enforcement, or by letter from the local police department. For out-of-state licensees, references shall include a criminal background check from that state, in addition to S.C.. The licensee shall be financially able to meet all obligations necessary to the proper operation of the facility.

L. Licensing Fees. The annual license fee shall be \$10.00 per licensed bed, or \$75.00 whichever is greater. Such fee shall be made payable by check or money order to the Department and is not refundable. Fees for additional beds shall be prorated based upon the remaining months of the licensure year. If the application is denied, a portion of the fee shall be refunded based upon the remaining months of the licensure year, or \$75.00, whichever is lesser.

M. Late Fee. Failure to submit a renewal application or fee 30 days or more after the license expiration date may result in a late fee of \$75.00 or 25% of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time-period specified by the Department may result in an enforcement action.

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N. License Renewal. For a license to be renewed, applicants shall file an application with the Department, pay a license fee, and shall not be undergoing enforcement actions by the Department. If the license renewal is delayed due to enforcement actions, the renewal license shall be issued only when the matter has been resolved satisfactorily by the Department, or when the adjudicatory process is completed, whichever is applicable.

O. Change of License.

1. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

- a. Change of ownership;
- b. Change of licensed bed capacity;
- c. Change of facility location from one geographic site to another.

2. Changes in facility name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee.

P. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where it is determined that the health, safety, and well-being of the residents are not compromised, and provided the standard is not specifically required by statute.

SECTION 200 - ENFORCING REGULATIONS

201. General

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

202. Inspections/Investigations

A. Inspections by the Department shall be conducted prior to initial licensing of a facility and subsequent inspections conducted as deemed appropriate by the Department. (I)

B. All facilities are subject to inspection/investigation at any time without prior notice by individuals authorized by S.C. Code of Laws. When staff members/volunteers/residents are absent, the facility shall provide information to those seeking legitimate access to the facility, including visitors, as to the expected return of staff members/volunteers/residents. (I)

C. Individuals authorized by S.C. law shall be granted access to all properties and areas, objects, and records in a timely manner, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. Physical area of inspections shall be determined by the extent to which there is potential impact/affect upon residents as determined by the inspector, e.g., flammable liquids unsecured in a staff member's bedroom, attic, or basement. (I)

D. When there is noncompliance with the licensing standards, the facility shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection/investigation. The written plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;

2. The actions taken to prevent recurrences (actual and similar);
3. The actual or expected completion dates of those actions.

E. Reports of inspections conducted by the Department, including the facility response, shall be made available by the facility upon request with the redaction of the names of those individuals in the report as provided by Sections 44-7-310 and 44-7-315 of the S.C. Code of Laws, 1976, as amended.

203. Consultations

Consultations shall be provided by the Department as requested by the facility or as deemed appropriate by the Department.

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SECTION 300 - ENFORCEMENT ACTIONS

301. General

When the Department determines that a facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice to the licensee, may impose a monetary penalty, deny, suspend, or revoke licenses.

302. Violation Classifications

Violations of standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a negative impact on the health, safety or well-being of persons in the facility. The citation of a Class II violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

D. The notations, "(I)" or "(II)" placed within sections of this regulation, indicate those standards are considered Class I or II violations if they are not met, respectively. Failure to meet standards not so annotated are considered Class III violations.

E. In arriving at a decision to take enforcement actions, the Department shall consider the following factors: specific conditions and their impact or potential impact on health, safety or well-being of the residents; efforts by the facility to correct cited violations; behavior of the licensee that would reflect negatively on the licensee's character such as illegal/illicit activities; overall conditions; history of compliance; any other pertinent conditions that may be applicable to current statutes and regulations.

F. When a decision is made to impose monetary penalties, the following schedule shall be used as a guide to determine the dollar amount:

Frequency of violation
of standard within a
36-month period:

MONETARY PENALTY RANGES

FREQUENCY	CLASS I	CLASS II	CLASS III
1 st	\$500 – 1,500	\$300 - 800	\$100 - 300
2 nd	1,000 – 3,000	500 – 1,500	300 - 800
3 rd	2,000 – 5,000	1,000 – 3,000	500 – 1,500
4 th	5,000	2,000 – 5,000	1,000 – 3,000
5 th	7,500	5,000	2,000 – 5,000
6 th	10,000	7,500	5,000

G. Any enforcement action taken by the Department may be appealed in a manner pursuant to the Administrative Procedures Act, Section 1-23-310, *et seq.*, S.C. Code of Laws, 1976, as amended.

SECTION 400 - POLICIES AND PROCEDURES

401. General (II)

A. Policies and procedures addressing each section of this regulation regarding resident care, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation. The policies and procedures shall address the provision of any special care offered by the facility which would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer’s disease and/or related dementia, physically/developmentally disabled, in accordance with any laws which pertain to that service offered, e.g., Alzheimer’s Special Care Disclosure Act. Facilities shall establish a time-period for review of all policies and procedures. These policies and procedures shall be accessible at all times and a hard copy shall be available or be readily accessible electronically at each facility.

B. The policies and procedures shall describe the means by which the facility shall assure that the standards described in this regulation, which the licensee has agreed to meet, as confirmed by application for licensing, are met.

SECTION 500 - STAFF/TRAINING

501. General (II)

A. Appropriate staff members/volunteers in numbers and training shall be provided to perform those duties that result in compliance to the regulation, to suit the needs and condition of the residents, and meet the demands of effective emergency on-site action that might arise. The facility may elect to not allow volunteers to work in the facility. Training requirements/qualifications for the tasks each performs shall be in compliance with all local, state, and federal laws, and current professional organizational standards. (I)

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B. Staff members/direct care volunteers of the facility shall not have a prior conviction or pled no contest (nolo contendere) for child or adult abuse, neglect, or mistreatment. The facility shall coordinate with applicable registries should licensed/certified individuals be considered as employees of the facility. For those staff members/volunteers who are licensed/certified, a copy shall be available for review. (I)

C. Staff members/volunteers shall be provided the necessary training to perform the duties for which they are responsible in an effective manner. (I)

D. No supervision/care/services shall be provided to individuals who are not residents of the facility other than children of owners of the facility who are residing in the facility. Minimum staffing requirements shall be applied in instances where children of owners reside in the facility, i.e., children of owners shall be considered as residents in the staff/resident ratio. (I)

E. Staff members/volunteers shall have at least the following qualifications: (I)

1. Capable of rendering care/services to residents in an understanding and sympathetic manner;
2. Sufficient education to be able to perform their duties, and to speak, read, and write English;
3. Demonstrate a working knowledge of regulations.

F. There shall be accurate information maintained regarding all staff members/volunteers of the facility, to include at least current address, phone number, and health and personal/work/training background, as well as current information. All staff members/volunteers shall be assigned certain duties and responsibilities which shall be in writing and in accordance with the individual's capability.

G. When a facility engages a source other than the facility to provide services, normally provided by the facility, e.g., staffing, training, recreation, food service, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, services, and rights.

502. Administrator (II)

A. The facility administrator shall be licensed as a CRCF administrator in accordance with Section 40-35-32 of the S.C. Code of Laws. In addition, all other applicable provisions of Title 40, Chapter 35, S.C. Code of Laws, 1993, as amended, shall be followed.

B. The administrator shall exercise judgement that reflects that s/he is mentally and emotionally capable of meeting the responsibilities involved in operating a facility to ensure that it is in compliance with these regulations, and shall demonstrate adequate knowledge of these regulations.

C. A staff member shall be designated in writing to act in the absence of the administrator, e.g., a listing of the lines of authority by position title, including the names of the persons filling these positions.

503. Staffing (I)

A. There shall be a staff member actively on duty at all times that the facility is occupied by residents and immediately accessible to all residents to whom the residents can report injuries, symptoms of illness, or emergencies, and who is responsible for assuring that appropriate action is taken promptly. This responsible staff

member is defined as an adult, who through training or work experience, is capable of recognizing and reporting significant changes in the physical or mental condition of each resident.

B. The number and qualifications of staff members/volunteers shall be determined by the number and condition of the residents. There shall be sufficient staff members/volunteers to provide direct care and basic services, e.g., Alzheimer's disease and/or related dementia, Alzheimer's special care unit or program. The minimum number of staff members/volunteers that shall be maintained in all facilities:

1. In each building, there shall be at least one staff member/volunteer for each eight residents or fraction thereof on duty during all periods of peak hours.

2. In each building, during nighttime (non-peak) hours, there shall be at least one staff member/volunteer on duty for each 30 residents or fraction thereof. In buildings housing more than eight residents, a staff member/volunteer shall be awake and dressed. Staff member(s)/volunteer(s) shall be able to appropriately respond to resident needs during nighttime hours. Should there be any residents whose cognitive/physical impairments prevent them from safely evacuating the facility independently, a staff member/volunteer shall be awake and dressed during nighttime hours, regardless of the resident number.

3. In facilities that are licensed for more than 10 beds, and the facility is of multi-floor design, there shall be a staff member available on the floor at all times residents are present on that floor.

C. Additional staff members shall be provided if it is determined by the Department that the minimum staff requirements are inadequate to provide appropriate care, services and supervision to the residents of a facility, e.g., to ensure a resident's personal safety when safety precautions are needed until the resident is assessed by a physician or other authorized healthcare provider for relocation to a higher level of care and subsequently relocated to an appropriate facility.

504. Inservice Training (I)

A. The following training shall be provided by appropriate resources, e.g., licensed/registered persons, video tapes, books, etc., to all staff members/direct care volunteers in context with their job duties and responsibilities, prior to resident contact and at a frequency determined by the facility, but at least annually:

1. Basic first-aid to include emergency procedures as well as procedures to manage/care for minor accidents or injuries;

2. Procedures for checking and recording vital signs (for designated staff members only);

3. Management/care of persons with contagious and/or communicable disease, e.g., hepatitis, tuberculosis, HIV infection;

4. Medication management including storage, administration, receiving orders, securing medications, interactions, and adverse reactions;

5. Depending on the type of residents, care of persons specific to the physical/mental condition being cared for in the facility, e.g., Alzheimer's Disease and/or related dementia, cognitive disability, etc., to include communication techniques (cueing and mirroring), understanding and coping with behaviors, safety, activities, etc.

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6. Use of restraints in accordance with the provisions of Section 905 (for designated staff members only);
7. OSHA standards regarding blood-borne pathogens;
8. Cardiopulmonary resuscitation for designated staff members/volunteers to insure that there is a certified staff member/volunteer present whenever residents are in the facility;
9. Confidentiality of resident information and records and the protecting of resident rights (review of Bill of Rights for Long-Term Care Facilities (Resident's Bill of Rights), etc.);
10. Fire response training within 24 hours of their first day on the job in the facility (See Section 1503);
11. Emergency procedures/disaster preparedness within 24 hours of their first day on the job in the facility (See Section 1400).

B. Those staff members/volunteers responsible for providing/coordinating recreational activities for the residents shall receive appropriate training prior to contact with residents and at least annually thereafter.

C. Job Orientation.

All new staff members/volunteers shall be oriented to acquaint them with the organization and environment of the facility, specific duties and responsibilities of staff members/volunteers, and residents' needs.

505. Health Status (I)

A. All staff members/direct care volunteers who have contact with residents, including food service staff members/volunteers, shall have a health assessment within 12 months prior to initial resident contact. The health assessment shall include tuberculin skin testing as described in Section 1702.

B. If a staff member/direct care volunteer is working at multiple facilities operated by the same licensee, copies of records for tuberculin skin testing and the pre-employment health assessment shall be acceptable at each facility. For any other staff member/direct care volunteer, a copy of the tuberculin skin testing shall be acceptable provided the test had been completed within three months prior to resident contact.

SECTION 600 - REPORTING

601. Incidents/Accidents

A. A record of each incident and/or accident, including usage of mechanical/physical restraints, involving residents or staff members/volunteers, occurring in the facility or on the facility grounds, shall be retained.

1. Incidents/accidents and/or serious medical conditions as defined below and any illness resulting in death or inpatient hospitalization shall be reported via telephone to the next-of-kin or responsible party immediately and the sponsoring agency at the earliest practicable hour, but not to exceed 12 hours of the occurrence, and in writing to the Department's Division of Health Licensing (DHL) within 10 days of the occurrence.

2. Serious medical conditions shall be considered as, but not limited to: fractures of major limbs or joints, severe burns, severe lacerations, severe hematomas, and actual/suspected abuse/neglect/exploitation of residents.

B. Reports shall contain at a minimum: facility name, resident age and sex, date of incident/accident, location, witness names, extent/type of injury and how treated, (e.g., hospitalization), identified cause of incident/accident, internal investigation results if cause unknown, identity of other agencies notified of incident/accident and the date of the report.

C. Incidents where residents have left the premises without notice to staff members/volunteers of intent to leave and have not returned to the facility within 24 hours, shall be reported to the next-of-kin, sponsoring agency or any agency providing services to the resident and local law enforcement immediately. When residents who are cognitively impaired leave the premises without notice to staff members/volunteers, regardless of the time-period of departure, law enforcement, next-of-kin, and sponsoring agency shall be contacted immediately. DHL shall be notified not later than 10 days of the occurrence.

D. Medication errors and adverse medication reactions shall be reported immediately to the next-of-kin or responsible party, prescriber, supervising staff member, and administrator, and no later than 12 hours, as applicable to the sponsoring agency, and recorded in the resident record.

E. Changes in the resident's condition, to the extent that serious health concerns, e.g., heart attack, are evident, shall be reported immediately to the attending physician and the next-of-kin/responsible party, and no later than 12 hours afterwards to the administrator and the sponsor. (I)

602. Fire/Disasters (II)

A. DHL shall be notified immediately via telephone or fax regarding any fire in the facility, and followed by a complete written report to include fire department reports, if any, to be submitted within a time-period determined by the facility, but not to exceed 72 hours from the occurrence of the fire.

B. Any natural disaster or fire, which requires displacement of the residents, or jeopardizes or potentially jeopardizes the safety of the residents, shall be reported to DHL via telephone/fax immediately, with a complete written report which includes the fire department report from the local fire department, if appropriate, submitted within a time-period as determined by the facility, but not to exceed 72 hours.

603. Communicable Diseases and Animal Bites (I)

All cases of diseases and animal bites which are required to be reported to the appropriate county health department shall be accomplished in accordance with R.61-20.

604. Administrator Change

DHL shall be notified in writing by the licensee within 10 days of any change in administrator. The notice shall include at a minimum the name of the newly-appointed individual, the effective date of the appointment, and a copy of the administrator's license.

605. Accounting of Controlled Substances (II)

Any facility registered with the Department s Bur
 Agency shall report any theft or loss of controlled substances to local law enforcement and to the Department's Bureau of Drug Control upon discovery of the loss/theft.

606. Emergency Placements

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In instances where evacuees have been relocated to the facility, DHL shall be notified not later than the following workday of the names of the individuals received.

607. Facility Closure

A. Prior to the permanent closure of a facility, DHL shall be notified in writing of the intent to close and the effective closure date. Within 10 days of the closure, the facility shall notify DHL of the provisions for the maintenance of the records, the identification of those residents displaced, the relocated site, and the dates and amounts of resident refunds. On the date of closure, the license shall be returned to DHL.

B. In instances where a facility temporarily closes, DHL shall be given written notice within a reasonable time in advance of closure. At a minimum this notification shall include, but not be limited to: the reason for the temporary closure, the location where the residents have been/will be transferred, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards of the facility prior to its reopening. If the facility is closed for a period longer than one year, and there is a desire to re-open, the facility shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

608. Zero Census

In instances when there have been no residents in a facility for any reason for a period of 90 days or more, the facility shall notify DHL in writing that there have been no admissions, no later than the 100th day following the date of departure of the last active resident. At the time of that notification, DHL shall consider, upon appropriate review of the situation, the necessity of inspecting the facility prior to any new and/or re-admissions to the facility. If the facility has no residents for a period longer than one year, and there is a desire to admit a resident, the facility shall re-apply to the DHL for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

SECTION 700 - RESIDENT RECORDS

701. Content (II)

A. The facility shall initiate and maintain an organized record for each resident. The record shall contain sufficient documented information to identify the resident and the agency and/or person responsible for each resident; support the diagnosis, secure the appropriate care/services (as needed); justify the care/services provided to include the course-of-action taken and results; the symptoms or other indications of sickness or injury; changes in physical/mental condition; the response/reaction to care, medication, and diet provided; and promote continuity of care among providers, consistent with acceptable standards of practice. All entries shall be written legibly in ink or typed, and signed, and dated.

B. Specific entries/documentation shall include at a minimum:

1. Consultations by physicians or other authorized healthcare providers;
2. Orders and recommendations for all medication, care, services, procedures, and diet from physicians or other authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the individual receiving the order;
3. Care/services provided;
4. Medications administered and procedures followed if an error is made;

5. Special procedures and preventive measures performed;
6. Notes of observation;
7. Time and circumstances of discharge or transfer, including condition at discharge or transfer, or death;
8. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician, plan for payment, and plan for securing medications;
9. Special information, e.g., do-not-resuscitate orders, allergies, etc.
10. Photograph of resident.

702. Assessment (II)

A complete written assessment of the resident in accordance with Section 101. I shall be conducted by a direct care staff member within a time-period determined by the facility, but no later than 72 hours after admission.

703. Individual Care Plan (II)

A. The facility shall develop an ICP with participation by, as evidenced by their signatures, the resident, administrator (or designee), and/or the sponsor or responsible party when appropriate, within seven days of admission. The ICP shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-appropriate individuals.

B. The ICP shall describe:

1. The needs of the resident, including the activities of daily living for which the resident requires assistance, i.e., what assistance, how much, who will provide the assistance, how often, and when;
2. Requirements and arrangements for visits by or to physicians or other authorized health providers;
3. Advanced care directives/healthcare power-of-attorney, as applicable;
4. Recreational and social activities which are suitable, desirable, and important to the well-being of the resident;
5. Dietary needs.

C. The ICP shall delineate the responsibilities of the sponsor and of the facility in meeting the needs of the resident, including provisions for the sponsor to monitor the care and the effectiveness of the facility in meeting those needs. Included shall be specific goal-related objectives based on the needs of the resident as identified during the assessment phase, including adjunct support service needs, other special needs, and the methods for achieving objectives and meeting needs in measurable terms with expected achievement dates.

704. Record Maintenance

A. The licensee shall provide accommodations, space, supplies, and equipment adequate for the protection and storage of resident records.

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B. When a resident is transferred from one facility to another, a transfer summary to include at a minimum, a copy of the ICP and medication administration record (MAR), shall be forwarded to the receiving facility at the time of transfer or immediately after the transfer if the transfer is of an emergency nature. (I)

C. The resident record is confidential and shall be made available only to individuals authorized by the facility and/or the S.C. Code of Laws. (II)

D. Records generated by organizations/individuals contracted by the facility for care/services shall be maintained by the facility that has admitted the resident.

E. The facility shall determine the medium in which information is stored.

F. Upon discharge of a resident, the record shall be completed within 30 days, and filed in an inactive/closed file maintained by the licensee. Prior to the closing of a facility for any reason, the licensee shall arrange for preservation of records to ensure compliance with these regulations. The licensee shall notify DHL, in writing, describing these arrangements and the location of the records.

G. Records of residents shall be maintained for at least six years following the discharge of the resident. Other regulation-required documents, e.g., fire drills, activity schedules, etc., shall be retained at least 12 months or since the last DHL general inspection, whichever is the longer period.

H. Records of residents are the property of the facility and shall not be removed without court order.

EXCEPTION: When a resident moves from one licensed facility to another within the same provider network (same licensee), the original record may follow the resident; the sending facility shall maintain documentation of the resident's transfer/discharge date and identification information. In the event of change of ownership, all active resident records or copies of active resident records shall be transferred to the new owner(s).

SECTION 800 – ADMISSION/RETENTION

801. General (I)

A. Individuals seeking admission shall be identified as appropriate for the level of care, services, or assistance offered. The facility shall establish admission criteria that are consistently applied and comply with local, state, and federal laws and regulations.

B. The facility shall admit and retain only those persons whose needs can be met by the accommodations and services provided. (I)

C. Persons not eligible for admission/retention are:

1. Any person who is likely to endanger him/herself or others as determined by a physician or other authorized healthcare provider. (I)

2. Any person other than an adult. (II)

3. Any person needing hospitalization or nursing home care. (I)

4. Anyone needing the continuous daily attention of a facility staff licensed nurse. Nursing care may be furnished to residents in need of short-term intermittent nursing care while convalescing from illness or injury, provided the nursing services are not furnished by facility staff members, e.g., the utilization of home health nurses for sterile dressing changes for or observation related to surgical site. (I)

5. Anyone not meeting facility requirements for admission; the facility may determine who is eligible for admission and retention in its policies, provided compliance with local, state, and federal laws and regulations is accomplished.

D. Residents whose condition changes to a degree that nursing home care or the daily attention of a nurse may be required, or have a contagious disease, shall be examined by a physician or other authorized healthcare provider regarding the possible necessity for transfer to a facility where the resident's eligibility for admission is appropriate.

E. When the provision of care/services in the facility, combined with other appropriately licensed services, in accordance with facility policy, e.g., hospice, home health, as may be ordered by a physician or other authorized healthcare provider, does not meet the needs of the resident, or if any resident becomes in need of continuous medical or nursing supervision, or if the facility does not have the capability to provide necessary care/services, the resident shall be transferred within 30 days to a location which shall meet those needs. The administrator shall coordinate this transfer with the resident, next-of-kin/responsible party, and sponsor.

SECTION 900 - RESIDENT CARE/SERVICES

901. General

A. There shall be a written agreement between the resident, and/or his/her responsible party, and the facility. The agreement shall include at least the following:

1. An explanation of the specific care/services/equipment provided by the facility, e.g., administration of medication, provision of special diet as necessary, assistance with bathing, toileting, feeding, dressing, and mobility;
2. Disclosure of fees for all care/services/equipment provided;
3. Advance notice requirements to change fee amount;
4. Refund policy to include when monies are to be forwarded to resident upon discharge/transfer/relocation;
5. The date a resident is to receive his/her personal needs allowance;
6. Transportation policy;
7. Discharge/transfer provisions to include the conditions under which the resident may be discharged and the agreement terminated, and the disposition of personal belongings;
8. Statement of resident personal rights, and the grievance procedure. (II)

B. Residents shall receive care, including diet, services, i.e., routine and emergency medical care, podiatry care, dental care, counseling and medications, as ordered by a physician or other authorized healthcare provider. Such care shall be provided and coordinated among those responsible during the process of providing such care/services and modified as warranted based upon any changing needs of the resident. Such care and services shall be detailed in the ICP. (I)

C. Care/services shall be rendered effectively and safely in accordance with orders from physicians or other authorized healthcare providers, and precautions taken for residents with special conditions, e.g., pacemakers, wheelchairs, Alzheimer's disease and/or related dementia, etc. Appropriate assistance in activities of daily living

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shall be provided to residents, as needed. Each facility is required to provide only those activities of daily living and only to the acuity levels which are specifically designated in the written agreement between the resident, and/or his/her responsible party/guardian, and the facility. (I)

D. Residents shall be neat, clean, appropriately and comfortably dressed in clean clothes, and provided the necessary items and assistance, if needed, to maintain their personal cleanliness, e.g., bar soap. (II)

E. The provision of care/services to residents shall be guided by the recognition of and respect for cultural differences to assure reasonable accommodations shall be made for residents with regard to differences, such as, but not limited to, religious practice and dietary preferences.

F. Opportunities for participation in religious services shall be available. Reasonable assistance in obtaining pastoral counseling shall be provided upon request by the resident.

G. In the event of closure of a facility for any reason, the facility shall insure continuity of care/services by promptly notifying the resident's attending physician or other authorized medical provider, and arranging for referral to other facilities at the direction of the physician or other authorized healthcare provider. (II)

902. Fiscal Management (II)

A. Provisions shall be made for safeguarding money and valuables for those residents who request this assistance.

B. Residents shall manage their own funds whenever possible.

C. Only residents may endorse checks made payable to them, unless a legally constituted authority has been authorized to endorse their checks.

D. In situations where a resident becomes unable to manage his/her funds, the administrator shall contact a family member or the county probate court regarding the need for a court-appointed guardian or conservator. The licensee, administrator, sponsor, or any of their relatives shall not be appointed guardian or conservator.

E. Upon written request of the resident, the administrator may maintain the personal monies for the resident.

F. The licensee may be designated payee for a resident.

G. There shall be an accurate accounting of residents' personal monies and written evidence of purchases by the facility on behalf of the residents to include a record of items/services purchased, written authorization from residents of each item/service purchased, and an accounting of all monies paid to the facility for care and services. Personal monies include all monies, including family donations. No personal monies shall be given to anyone, including family members, without written consent of the resident. If a resident's money is given to anyone by the facility, a receipt shall be obtained.

H. A report of the balance of resident finances shall be physically provided to each resident by the facility on a quarterly basis in accordance with the Resident's Bill of Rights, regardless of the balance amount, e.g., zero balance.

903. Recreation

A. The facility shall offer a variety of recreational programs to suit the interests and physical/cognitive capabilities of the residents that choose to participate. The facility shall provide recreational activities that provide stimulation; promote or enhance physical, mental, and/or emotional health; are age-appropriate; and are based on input from the residents and/or responsible party, as well as information obtained in the initial assessment.

B. There shall be at least one different structured recreational activity provided daily each week that shall accommodate residents' needs/interests/capabilities as indicated in the ICP's.

C. The facility shall designate a staff member responsible for the development of the recreational program, to include responsibility for obtaining and maintaining recreational supplies.

D. The recreational supplies shall be adequate and shall be sufficient to accomplish the activities planned.

E. A current month's schedule shall be posted in order for residents to be made aware of activities offered. This schedule shall include activities, dates, times, and locations. Residents may choose activities and schedules consistent with their interests and physical, mental, and psychosocial well-being. If a resident has Alzheimer's disease and/or related dementia and is unable to choose for him/herself, staff members/volunteers shall encourage participation and assist when deemed necessary.

904. Transportation (I)

The facility shall secure or provide transportation for residents when a physician's services are needed. Local (as defined by the facility) transportation for medical reasons shall be provided by the facility at no additional charge to the resident. If a physician's services are not immediately available and the resident's condition requires immediate medical attention, the facility shall provide or secure transportation for the resident to the appropriate health care providers such as, but not limited to, physicians, dentists, physical therapists, or for treatment at renal dialysis facilities.

905. Safety Precautions/Restraints (I)

A. Periodic or continuous mechanical or physical restraints during routine care of a resident shall not be used, nor shall residents be restrained for staff convenience or as a substitute for care/services. However, in cases of extreme emergencies when a resident is a danger to him/herself or others, mechanical and/or physical restraints may be used as ordered by a physician or other authorized healthcare provider, and until appropriate medical care can be secured.

B. Only those devices specifically designed as restraints may be used. Makeshift restraints shall not be used under any circumstance.

C. Emergency restraint orders shall specify the reason for the use of the restraint, the type of restraint to be used, the maximum time the restraint may be used, and instructions for observing the resident while restrained, if different from the facility's written procedures. Residents certified by a physician or other authorized healthcare provider as requiring restraint for more than 24 hours shall be transferred to an appropriate facility.

D. During emergency restraint, residents shall be monitored at least every 15 minutes, and provided with an opportunity for motion and exercise at least every 30 minutes. Prescribed medications and treatments shall be administered as ordered, and residents shall be offered nourishment and fluids and given bathroom privileges.

906. Discharge/Transfer

A. Residents shall be transferred or discharged only as appropriate per the provisions of the Resident's Bill of Rights. In cases of medical emergencies, immediate transfer is permissible; however, the family member, and the sponsor, if any, shall be notified at the earliest practical hour, but not later than 24 hours following the transfer. (II)

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B. Prior to discharge, the resident, his/her appropriate family member, and the sponsor, if any, shall be consulted.

C. Residents shall be transferred or discharged to a location appropriate to the residents needs and abilities. Residents requiring care and/or supervision shall not be transferred/discharged to a location that is not licensed to provide that care. (II)

D. Upon transfer/discharge of a resident, resident information shall be released in a manner that promotes continuity in the care that serves the best interest of the resident.

E. Upon transfer/discharge, the facility shall ensure that medications, as appropriate, personal possessions and funds are released to the resident and/or the receiving facility in a manner that ensures continuity of care/services and maximum convenience of the resident. (II)

SECTION 1000 - RIGHTS AND ASSURANCES

1001. General (II)

A. The facility shall comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, *et seq.*, of the S.C. Code of Laws, 1976, as amended, Resident Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, *et seq.* (I)

s Bill of Right

B. The Resident's Bill of Rights, the Omnibus Adult Protection Act, and other notices as required by law, shall be prominently displayed in public areas of the facility.

C. The facility shall comply with all relevant federal, state, and local laws and regulations concerning discrimination, e.g., Title VII, Section 601 of the Civil Rights Act of 1964, and insure that there is no discrimination with regard to source of payment in the recruitment, location of resident, acceptance or provision of goods and services to residents or potential residents, provided that payment offered is not less than the cost of providing services.

D. Achieving the highest level of self-care and independence by residents shall be reflected in the manner in which the facility provides/promotes resident care, e.g., residents making their own decisions, selecting a physician or other provider, maintaining personal property, managing finances.

E. Should a facility develop "house rules," the rules shall not be in conflict with the provisions of the Resident's Bill of Rights or other rights/assurances addressed in this regulation.

F. Residents shall be provided the opportunity to provide input into changes in facility operational policies, procedures, services, including "house rules."

G. Residents shall be assured freedom of movement. Residents shall not be locked in or out of their rooms or any common usage areas (e.g., dining, sitting, activity rooms) in the facility, or in or out of the facility building. (I)

Exception: Exit doors may be locked as determined by the facility based upon the condition of the resident, e.g., Alzheimer's disease and/or related dementia, provided Section 2301.D is met.

H. The facility shall develop a grievance/complaint procedure to be exercised on behalf of the residents to enforce the Resident's Bill of Rights which includes the address and phone number of DHL, and a provision prohibiting retaliation should the grievance right be exercised.

I. Care, services, and items provided by the facility, the charges, and those services that are the responsibilities of the resident shall be delineated in writing. The resident shall be made aware of such charges/services and changes to charges/services as verified by the signature of the resident or responsible party.

J. Residents shall not be requested or required to perform any type of care/service in the facility that would normally be the duty of a staff member/volunteer. Residents may be allowed to engage in such activities as listed in the ICP, if strictly voluntary, and under proper supervision. (I)

K. Residents shall be allowed sufficient time to attempt and complete activities of daily living tasks without unnecessary intervening by staff members/volunteers in order to expedite completion of the tasks. Staff members/volunteers shall intervene appropriately as necessary to assist residents whose completion of the tasks may be impeded by their physical/mental condition.

L. Residents shall be permitted to use the telephone and shall be allowed privacy when making telephone calls.

M. In instances when a resident moves/relocates, lack of advance notice by the resident of the departure shall not relieve the facility of the obligation to refund the monies due the resident.

SECTION 1100- RESIDENT PHYSICAL EXAMINATION AND TB SCREENING

1101. General (I)

A. A physical examination shall be completed for residents within 30 days prior to admission and at least annually thereafter. The physical examination shall address the appropriateness of placement in a CRCF, medications required and self-administration status, and identification of special conditions/care required, e.g., if a resident has a communicable disease, dental problems, podiatric problems, Alzheimer's disease and/or related dementia, etc.

B. The admission physical examination shall include a two-step tuberculin skin test, as described in Section 1702, unless there is a documented previous positive reaction.

C. The physical examination shall be performed only by a physician or other authorized healthcare provider.

D. If a resident or potential resident has a communicable disease, the administrator shall seek advice from a physician or other authorized healthcare provider in order to:

1. Insure the facility has the capability to provide adequate care and prevent the spread of that condition, and that the staff members/volunteers are adequately trained;
2. Transfer the resident to an appropriate facility, if necessary.

E. A discharge summary from a health care facility, which includes a physical examination, may be acceptable as the admission physical examination, provided the summary includes the requirements of Sections 1101.A - C above.

F. Isolation Provisions. Residents with contagious pulmonary tuberculosis shall be separated from all other noninfected residents until declared noncontagious by a physician or other authorized healthcare provider. Should it be determined that the facility cannot care for the resident to the degree which assures the health and safety of the resident and the other residents of the facility, the resident shall be relocated to a facility that can meet his/her needs.

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G. In the event that a resident transfers from a facility licensed by the Department to a CRCF, an additional admission physical examination shall not be required, provided the sending facility has had a physical examination conducted on the resident not earlier than 12 months prior to the admission of the resident to the CRCF, and the physical examination meets requirements specified in Sections 1101.A - C above unless the receiving facility has an indication that the health status of the resident has changed significantly. A tuberculin skin test shall be required within one month after admission to the CRCF to which the resident transfers, to document baseline status for that facility. The receiving facility shall acquire a copy of the admission physical examination/tuberculin skin test from the facility transferring the resident. (See Section 1702.B regarding tuberculin skin testing.)

SECTION 1200 - MEDICATION MANAGEMENT

1201. General (I)

A. Medications, including controlled substances, medical supplies, and those items necessary for the rendering of first aid shall be properly managed in accordance with local, state, and federal laws and regulations. Such management shall address the securing, storing, and administering of medications, medical supplies, first aid supplies, and biologicals, their disposal when discontinued or outdated, and their disposition at discharge, death, or transfer of a resident.

B. Applicable reference materials published within the previous three years shall be available at the facility in order to provide staff members/volunteers with adequate information concerning medications.

1202. Medication Orders (I)

A. Medication, to include oxygen, shall be administered to residents only upon orders (to include standing orders) of a physician or other authorized healthcare provider. Medications accompanying residents at admission may be administered to residents provided the medication is in the original labeled container and the order is subsequently obtained as a part of the admission physical examination. Should there be concerns regarding the appropriateness of administering medications due to the condition/state of the medication, e.g., expired, makeshift or illegible labels, or the condition/state of health of the newly-admitted resident, staff members shall consult with or make arrangements to have the resident examined by a physician or other authorized healthcare provider, or at the local hospital emergency room prior to administering any medications.

B. All orders (including verbal orders) shall be received only by staff members authorized by the facility, and shall be signed and dated by a physician or other authorized healthcare provider no later than 72 hours after the order is given.

C. Medications and medical supplies ordered for a specific resident shall not be provided/administered to any other resident.

1203. Administering Medication (I)

A. Doses of medication shall be administered by the same staff member who prepared them for administration. Preparation shall occur no earlier than one hour prior to administering. Preparation of doses for more than one scheduled administration shall not be permitted. Each medication dose administered or supervised shall be properly recorded by initialing on the resident's medication administration record (MAR) as the medication is administered. Recording medication administration shall include medication name, dosage, mode of administration, date, time, and the signature of the individual administering or supervising the taking of the medication. If the ordered dosage is to be given on a varying schedule, e.g., "take two tablets the first day and one tablet every other day by mouth with noon meal," the number of tablets shall also be recorded.

B. Facility staff members may administer routine medications, acting in a surro these staff members have been trained to perform these tasks in the proper manner by individuals licensed to administer medications. Facility staff members may administer injections of medications only in instances where medications are required for diabetes and conditions associated with anaphylactic reactions under established medical protocol. A staff licensed nurse may administer influenza and vitamin B-12 injections and perform tuberculin skin tests. Although facility staff members may monitor blood sugar levels (provided s/he has been appropriately trained and the facility has received a "Certificate of Waiver" from Clinical Laboratories Improvement Amendments (CLIA)), the provision of sliding scale insulin injections by facility staff members is prohibited.

C. Self-administering of medications by a resident is permitted only:

1. Upon the specific written orders of the physician or other authorized healthcare provider, obtained on a semi-annual basis, or

2. The facility shall ascertain by resident demonstration to the staff, at least quarterly, that s/he remains capable of self-administering medications.

D. Facilities may elect not to permit self-administration.

E. When residents who are unable to self-administer medications leave the facility for an extended period of time, the proper amount of medications, along with dosage, mode, date, and time of administration, shall be given to a responsible person who will be in charge of the resident during his/her absence from the facility; these details shall be properly documented in the MAR. In these instances, the amount of medication needed for the designated period of time may be transferred to a prescription vial or bottle that is properly labeled.

F. At each shift change, there shall be a documented review of the MAR's by outgoing staff members with incoming staff members that shall include verification by outgoing staff members that they have properly administered medications in accordance with orders by a physician or other authorized healthcare provider, and have documented the administrations. Errors/omissions indicated on the MAR's shall be addressed and corrective action taken at that time.

1204. Pharmacy Services (I)

A. Any pharmacy within the facility shall be provided by or under the direction of a pharmacist in accordance with accepted professional principles and appropriate local, state, and federal laws and regulations.

B. Facilities which maintain stocks of legend drugs and biologicals for dispensing to residents shall obtain and maintain a valid, current pharmacy permit from the S.C. Board of Pharmacy.

C. Labeling of medications dispensed to residents shall be in compliance with local, state, and federal laws and regulations, to include expiration date.

1205. Medication Containers (I)

A. Medications for residents shall be obtained from a permitted pharmacy or prescriber on an individual prescription basis. These medications shall bear a label affixed to the container which reflects at least the following: name of pharmacy, name of resident, name of the prescribing physician or other authorized healthcare provider, date and prescription number, directions for use, and the name and dosage unit of the medication. The label shall be brought into accord with the directions of the physician or other authorized healthcare provider each time the

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prescription is refilled. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the pharmacy for re-labeling or disposal.

B. Medications for each resident shall be kept in the original container(s) including unit dose systems; there shall be no transferring between containers (except in instances such as in Section 1203.E above), or opening blister packs to remove medications for destruction or adding new medications for administration, except under the direction of a pharmacist. In addition, for those facilities that utilize the unit dose system, e.g., Medicine-On-Time, an on-site review of the medication program by a pharmacist shall be conducted on at least a quarterly basis to assure the program has been properly implemented and maintained. For changes in dosage, the new packaging shall be available in the facility no later than the next administration time subsequent to the order.

C. If a physician or other authorized healthcare provider changes the dosage of a medication, a label, which does not obscure the original label, shall be attached to the container which indicates the new dosage, date, and prescriber's name. In lieu of this procedure, it is acceptable to attach a label to the container that states, "Directions changed; refer to MAR and physician or other authorized healthcare provider orders for current administration instructions." The new directions shall be communicated to the pharmacist upon receipt of the order.

1206. Medication Storage (I)

A. Medications shall be properly stored and safeguarded to prevent access by unauthorized persons. Expired or discontinued medications shall not be stored with current medications. Storage areas shall be locked, and of sufficient size for clean and orderly storage. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf life. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U.S. Pharmacopeia (36 – 46 degrees F.). If a multi-use refrigerator is used to store medications outside the secured medication storage area, a separate locked box shall be used to store medications, provided the refrigerator is near the medication storage area.

B. Medications shall be stored:

1. Separately from poisonous substances or body fluids;

2. In a manner which provides for separation between topical and oral medications, and which provides for separation of each individual resident's medication.

C. A record of the stock and distribution of all controlled substances shall be maintained in such a manner that the disposition of each dose of any particular item may be readily traced.

D. Unless the facility has a permitted pharmacy, legend medications shall not be stored except those specifically prescribed for individual residents. Nonlegend medications that can be obtained without a prescription may be retained and labeled as stock in the facility for administration as ordered by a physician or other authorized healthcare provider.

E. The medications prescribed for a resident shall be protected from use by any other individuals. For those residents who have been authorized by a physician or other authorized healthcare provider to self-administer medications, such medications may be kept on the resident's person, i.e., a pocketbook, pocket, or any other method that would enable the resident to control the items.

F. No medication shall be left in a resident's room unless the facility provides an individual cabinet/compartments which is kept locked in the room of each resident who has been authorized in writing to self-administer by a physician or other authorized healthcare provider. In lieu of a locked cabinet/ compartments, storage of medications shall be permitted in a resident room which can be locked, provided the room is licensed for one bed; medications are not accessible by unauthorized persons; the room is kept locked when the resident is not in the room; the medications are not controlled substances and all other requirements of this section are met.

G. During nighttime hours in resident rooms, only medications which a physician or other authorized healthcare provider has ordered in writing for emergency/immediate use, e.g., nitroglycerin or inhalers, may be kept unlocked in or upon a cabinet or bedside table, and only when the resident to whom that medication belongs is present in the room.

1207. Disposition of Medications (I)

A. Upon discharge of a resident, unused medications shall be released to the resident, family member, responsible party, or sponsor, as appropriate, unless specifically prohibited by the attending physician or other authorized healthcare provider.

B. Residents' medications shall be destroyed by the facility administrator or his/her designee when:

1. Medication has deteriorated or exceeded its expiration date;

2. Unused portions remain due to death or discharge of the resident, or discontinuance of the medication (may also be returned to the dispensing pharmacy). Medication that has been discontinued by order may be stored for a period not to exceed 30 days provided they are to be stored separately from current medications.

C. The destruction of medication shall occur within five days of the above-mentioned circumstances, be witnessed by the administrator or his/her designee, the mode of destruction indicated, and these steps documented. Destruction records shall be retained by the facility for a period of two years.

D. The destruction of controlled substances shall be accomplished only by the administrator or his/her designee on-site and witnessed by a licensed nurse or pharmacist, or by returning them to the dispensing pharmacy and obtaining a receipt from the pharmacy.

SECTION 1300 - MEAL SERVICE

1301. General (II)

A. All facilities that prepare food on-site shall be approved by DHL, and shall be regulated, inspected, and graded pursuant to R.61-25. Facilities preparing food on-site and licensed for 16 beds or more subsequent to the promulgation of these regulations shall have commercial kitchens. Existing facilities with 16 licensed beds or more may continue to operate with equipment currently in use; however, only commercial kitchen equipment shall be used when replacements are necessary. Those facilities with 15 beds or less shall be regulated pursuant to R.61-25 with certain exceptions in regard to equipment (may utilize domestic kitchen equipment).

B. When meals are catered to a facility, such meals shall be obtained from a food service establishment graded by the Department, pursuant to R.61-25, and there shall be a written executed contract with the food service establishment.

C. If food is prepared at a central kitchen and delivered to separate facilities or separate buildings and/or floors of the same facility, provisions shall be made and approved by DHL for proper maintenance of food temperatures and a sanitary mode of transportation.

D. Food shall be prepared by methods that conserve the nutritive value, flavor and appearance. The food shall be palatable, properly prepared, and sufficient in quantity and quality to meet the daily nutritional needs of the residents in accordance with written dietary policies and procedures. Efforts shall be made to accommodate the

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religious, cultural, and ethnic preferences of each individual resident and consider variations of eating habits, unless the orders of a physician or other authorized healthcare provider contraindicate.

1302. Food and Food Storage

A. The storage, preparation, serving, transportation of food, and the sources from which food is obtained shall be in accordance with R.61-25. (I)

B. Home canned food usage shall be prohibited. (I)

C. All food items shall be stored at a minimum of six inches above the floor on clean surfaces, and in such a manner as to be protected from splash and other contamination. (II)

D. At least a one-week supply of staple foods and a two-day supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu and special or therapeutic diets. (II)

E. Food stored in the refrigerator/freezer shall be covered, labeled, and dated. Prepared food shall not be stored in the refrigerator for more than 72 hours. (II)

1303. Food Equipment and Utensils (II)

The equipment and utensils utilized, and the cleaning, sanitizing, and storage of such shall be in accordance with R.61-25.

EXCEPTION: In facilities with five licensed beds or less, in lieu of a three-compartment sink, a domestic dishwasher may be used to wash equipment/utensils, provided the facility has at least a two-compartment sink that will be used to sanitize and adequately air dry equipment/utensils. In facilities with 10 beds or less and licensed prior to May 24, 1991, as CRCF's, in which a two-compartment sink serves to wash kitchen equipment/utensils, an additional container of adequate length, width, and depth may be provided to completely immerse all equipment/utensils for final sanitation. Domestic dishwashers may be utilized in facilities licensed with 10 beds or less prior to May 24, 1991, provided they are approved by DHL.

1304. Meals and Services

A. All facilities shall provide dietary services to meet the daily nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (I)

B. The dining area shall provide a congenial and relaxed environment. Table service shall be planned in an attractive and colorful manner for each meal and shall include full place settings with napkins, tablecloths or place-mats, and nondisposable forks, spoons, knives, drink containers, plates, and other eating utensils/containers as needed.

C. A minimum of three nutritionally-adequate meals, in accordance with Section 1304.A above, in each 24-hour period, shall be provided for each resident unless otherwise directed by the resident's physician or other authorized healthcare provider. Not more than 14 hours shall elapse between the serving of the evening meal and breakfast the following day. (II)

D. Special attention shall be given to preparation and prompt serving in order to maintain correct food temperatures for serving at the table or resident room (tray service). (II)

E. The same foods shall not be repetitively served during each seven-day period except to honor specific, individual resident requests.

F. Specific times for serving meals shall be established, documented on a posted menu, and followed.

G. Suitable food and snacks shall be available and offered between meals at no additional cost to the residents. (II)

H. Residents shall be encouraged to eat in the dining room at mealtime. Tray service shall be permitted when the resident is medically unable to access the dining area for meals, or if the facility has received written notice from the resident/responsible party of a preference to receive tray service, in which case it may be provided on an occasional basis. Under no circumstances, may staff members utilize tray service for their own convenience. (II)

1305. Meal Service Personnel (II)

A. The health and cleanliness of all those engaged in food preparation and serving shall be in accordance with R.61-25.

B. Sufficient staff members/volunteers shall be available to serve food and to provide individual attention and assistance, as needed.

C. Approved hair restraints (covering all loose hair) shall be worn by all individuals engaged in the preparation of foods.

D. Dietary services shall be organized with established lines of accountability and clearly defined job assignments for those engaged in food preparation and serving. There shall be trained staff members/ volunteers to supervise the preparation and serving of the proper diet to the residents including having sufficient knowledge of food values in order to make appropriate substitutions when necessary. The facility shall not permit residents to engage in food preparation.

EXCEPTION: A resident may engage in food preparation provided the following criteria are met:

1. Approval to engage in food preparation by a physician or other authorized medical authority;
2. The ICP of the resident has indicated food preparation as suitable/beneficial to the resident;
3. The resident is directly supervised by staff members/volunteers (must be in the kitchen with the resident);
4. Preparing food must be part of an organized program in which daily living skills are being taught;
5. The utilization of residents for preparing food is not a substitute for staff members/volunteers.

1306. Diets

A. If the facility accepts or retains residents in need of medically-prescribed special diets, the menus for such diets shall be planned by a professionally-qualified dietitian or shall be reviewed and approved by a physician or other authorized healthcare provider. The facility shall provide supervision of the preparation and serving of any special diet, e.g., low-sodium, low-fat, 1200-calorie, diabetic diet. (I)

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B. If special diets are required, the necessary equipment for preparation of those diets shall be available and utilized.

C. A diet manual published within the previous five years shall be available and shall address at minimum:

1. Food sources and food quality;
2. Food protection storage, preparation and service;
3. Food worker health and cleanliness;
4. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences food serving recommendations;
5. General menu planning;
6. Menu planning appropriate to special needs, e.g., diabetic, low-salt, low-cholesterol, or other diets appropriate for the elderly and/or infirmed.

1307. Menus

A. Menus shall be planned and written at a minimum of one week in advance and dated as served. The current week's menu, including routine and special diets and any substitutions or changes made, shall be readily available and posted in one or more conspicuous places in a public area. All substitutions made on the master menu shall be recorded in writing. Cycled menus shall be rotated so that the same weekly menu is not duplicated for at least a period of three weeks.

B. Records of menus as served shall be maintained for at least 30 days.

1308. Ice and Drinking Water (II)

A. Ice from a water system that is in accordance with R.61-58, shall be available and precautions taken to prevent contamination. The ice scoop shall be stored in a sanitary manner outside of the ice container.

B. Potable drinking water shall be available and accessible to residents at all times.

C. The usage of common cups shall be prohibited.

D. Ice delivered to resident areas in bulk shall be in nonporous, covered containers that shall be cleaned after each use.

1309. Equipment (II)

A. Liquid or powder soap dispensers and sanitary paper towels shall be available at each food service handwash lavatory.

B. In facilities of 16 or more licensed beds, separate handwash sinks shall be provided, convenient to serving, food preparation, and dishwashing areas.

C. All walk-in refrigerators and freezers shall be equipped with opening devices which will permit opening of the door from the inside at all times. (I)

1310. Refuse Storage and Disposal (II)

Refuse storage and disposal shall be in accordance with R.61-25.

SECTION 1400 - EMERGENCY PROCEDURES/DISASTER PREPAREDNESS

1401. Disaster Preparedness (II)

A. All facilities shall develop, in coordination with their county emergency preparedness agency, a suitable written plan for actions to be taken in the event of a disaster. Prior to initial licensing of a facility, the completed plan shall be submitted to DHL for review. Additionally, in instances where there are applications for increases in licensed bed capacity, the emergency/disaster plan shall be updated to reflect the proposed new total licensed bed capacity. All staff members/volunteers shall be made familiar with this plan and instructed as to any required actions. A copy of the disaster plan shall be provided to the resident/resident's sponsor at the time of admission.

B. The disaster plan shall include, but not be limited to:

1. A sheltering plan to include:

- a. The licensed bed capacity and average occupancy rate;
- b. Name, address and phone number of the sheltering facility(ies) to which the residents will be relocated during a disaster;
- c. A letter of agreement signed by an authorized representative of each sheltering facility which shall include: the number of relocated residents that can be accommodated; sleeping, feeding, and medication plans for the relocated residents; and provisions for accommodating relocated staff members/volunteers. The letter shall be updated annually with the sheltering facility and whenever significant changes occur. For those facilities located in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown counties, at least one sheltering facility shall be located in a county other than these counties.

2. A transportation plan, to include agreements with entities for relocating residents, which addresses:

- a. Number and type of vehicles required;
 - b. How and when the vehicles are to be obtained;
 - c. Who (by name or organization) will provide drivers;
 - d. Procedures for providing appropriate medical support and medications during relocation;
 - e. Estimated time to accomplish the relocation;
 - f. Primary and secondary routes to be taken to the sheltering facility.
3. A staffing plan for the relocated residents, to include:
- a. How care will be provided to the relocated residents, including the number and type of staff members;

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b. Plans for relocating staff members or assuring transportation to the sheltering facility;

c. Co-signed statement by an authorized representative of the sheltering facility if staffing is to be provided by the sheltering facility.

1402. Emergency Call Numbers

Emergency call data shall be posted in a conspicuous place and shall include at least the telephone numbers of fire and police departments, ambulance service, and the poison control center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of staff members/volunteers to be notified in case of emergency.

1403. Continuity of Essential Services (II)

There shall be a plan to be implemented to assure the continuation of essential resident support services for such reasons as power outage, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

SECTION 1500 - FIRE PREVENTION

1501. Arrangements for Fire Department Response/Protection (I)

A. Each facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, i.e., fire plan and evacuation plan.

B. Facilities located outside of a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the facility and a copy shall be forwarded to DHL. If the agreement is changed, a copy shall be forwarded to DHL.

1502. Tests and Inspections (I)

A. Fire protection and suppression systems shall be maintained and tested in accordance with NFPA 10, 13, 14, 15, 25, 70, 72, and 96.

B. All electrical installations and equipment shall be maintained in a safe, operable condition in accordance with NFPA 70 and 99 and shall be inspected at least annually.

1503. Fire Response Training (I)

A. Each staff member/volunteer shall receive training within 24 hours of his/her first day on the job in the facility and at least annually thereafter, addressing at a minimum, the following:

1. Fire plan, including the training of staff members/volunteers;
2. Reporting a fire;
3. Use of the fire alarm system, if applicable;
4. Location and use of fire-fighting equipment;
5. Methods of fire containment;

6. Specific responsibilities, tasks, or duties of each individual.

B. A plan for the evacuation of residents, staff members, and visitors, to include evacuation routes and procedures, in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the facility, and a copy of the plan shall be provided to each resident and/or the resident's sponsor at the time of admission.

C. All residents capable of assisting in their evacuation shall be trained in the proper actions to take in the event of a fire, e.g., actions to take if the primary escape route is blocked. Residents shall be trained to assist each other in case of fire to the extent their physical and mental abilities permit them to do so without additional personal risk.

D. Residents shall be made familiar with the fire plan and evacuation plan upon admission.

1504. Fire Drills (I)

A. An unannounced fire drill shall be conducted at least quarterly for all shifts. Each staff member/ volunteer shall participate in a fire drill at least once each year. Records of drills shall be maintained at the facility, indicating the date, time, shift, description, and evaluation of the drill, and the names of staff members/volunteers and residents directly involved in responding to the drill. If fire drill requirements are mandated by statute or regulation, then provisions of the statute or regulation shall be complied with and shall supersede the provisions of Section 1504.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1503 above.

C. All residents shall participate in fire drills. In instances when a resident refuses to participate in a drill, efforts shall be made to encourage participation, e.g., counseling, implementation of incentives rewarding residents for participation, specific staff/volunteer to resident assignments to promote resident participation. Continued refusal may necessitate implementation of the discharge planning process to place the resident in a setting more appropriate to their needs and abilities.

D. In conducting fire drills, all residents shall evacuate to the outside of the building to a selected assembly point; drills shall be designed to ensure that residents shall be given the experience of exiting through all exits.

SECTION 1600 - MAINTENANCE

1601. General (II)

A. The structure, including its component parts and equipment, shall be properly maintained to perform the functions for which it is designed.

B. Noise, dust, and other related resident intrusions shall be minimized when construction/renovation activities are underway.

SECTION 1700 - INFECTION CONTROL AND ENVIRONMENT

1701. Staff Practices (I)

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Staff/volunteer practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures/practices shall be in compliance with applicable guidelines of the Blood borne Pathogens Standard of the Occupational Safety and Health Act (OSHA) of 1970; the Centers for Disease Control and Prevention (CDC); the Department's Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable federal, state, and local laws and regulations.

1702. Tuberculin Skin Testing (I)

A. Tuberculin skin testing, utilizing a two-step intradermal (Mantoux) method of five tuberculin units of stabilized purified protein derivative (PPD), is a procedure recommended by the CDC Guidelines for Preventing Transmission of Mycobacterium Tuberculosis in Healthcare Facilities to establish baseline status. The two-step procedure involves one initial tuberculin skin test with a negative result, followed 7-21 days later by a second test. It is permissible for a licensed nurse to perform the tuberculin screening.

B. Testing Procedures.

1. Staff members/direct care volunteers of facilities shall be required to have evidence of a two-step tuberculin skin test within three months prior to resident contact. If there is a documented negative tuberculin skin test (at least single-step) within the previous 12 months, the person shall be required to have only one tuberculin skin test to establish a baseline status.

2. Staff members/direct care volunteers with negative test results from the initial two-step procedure shall be required to have an annual one-step skin test.

3. Residents shall have at least the first step within the period for completion of the admission physical examination as specified in Section 1101 (within 30 days prior to admission).

C. Positive Reactions/Exposure.

1. Individuals with tuberculin skin test reactions of 10mm or more of induration and known human immunodeficiency virus (HIV)-positive individuals with tuberculin skin test reactions of 5mm or more of induration shall be referred to a physician or other authorized healthcare provider for appropriate evaluation.

2. All persons who are known or suspected to have tuberculosis (TB) shall be evaluated by a physician or other authorized healthcare provider.

3. Staff members/direct care volunteers will not be allowed to return to work until they have been declared non-contagious.

4. Residents with symptoms of TB shall be isolated and/or treated/referred as necessary until certified as non-contagious by a physician or other authorized healthcare provider.

5. Individuals who have had a prior history of TB shall be required to have a chest radiograph and certification within one month prior to employment/admission by a physician or other authorized healthcare provider that they are not contagious.

6. If an individual who was previously documented as skin test negative has an exposure to a documented case of TB, the facility shall immediately contact the local county health department or the Department's TB Control Division for consultation.

D. Treatment.

1. Preventive treatment of persons who are new positive reactors is recommended unless specifically contraindicated.

2. Individuals who complete treatment either for disease or infection are exempt from further treatment unless they develop symptoms of TB. An individual who remains asymptomatic shall not be required to have a chest radiograph, but shall have an annual documented assessment by a physician or other authorized healthcare provider for symptoms suggestive of TB, e.g., cough, weight loss, night sweats, fever, etc.

1703. Housekeeping (II)

The facility and its grounds shall be neat, uncluttered, clean, and free of vermin and offensive odors.

A. Interior housekeeping shall at a minimum include:

1. Cleaning each specific area of the facility;
2. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area appropriate to the area and the equipment's purpose or use;
3. Safe storage of chemicals indicated as harmful on the product label, cleaning materials, and supplies in cabinets or well-lighted closets/rooms, inaccessible to residents. If a physician or other authorized healthcare provider has determined that a resident is capable of appropriately using a cleaning product or other hazardous agent, the facility may elect to permit the resident to use the product, provided there is a written statement from a physician or other authorized healthcare provider that assures that the resident is capable of maintaining the product in a secure locked manner and that a description of product usage is outlined in the resident's ICP.

B. Exterior housekeeping shall at a minimum include:

1. Cleaning of all exterior areas, e.g., porches and ramps, and removal of safety impediments such as snow and ice;
2. Keeping facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

1704. Infectious Waste (I)

Accumulated waste, including all contaminated sharps, dressings, and/or similar infectious waste, shall be disposed of in a manner compliant with OSHA Blood-borne Pathogens Standard, and the Department's S.C. Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105.

1705. Pets (II)

A. If the facility chooses to permit pets, healthy animals that are free of fleas, ticks, and intestinal parasites, and have been screened by a veterinarian prior to entering the facility, have received required inoculations, if applicable, and that present no apparent threat to the health, safety, and well-being of the residents, may be permitted in the facility, provided they are sufficiently fed and cared for, and that both the pets and their housing are kept clean.

B. Pets shall not be allowed near residents who have allergic sensitivities to pets, or for other reasons such as residents who do not wish to have pets near them.

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C. Pets shall not be allowed in the kitchen area. Pets shall be permitted in resident dining areas only during times when food is not being served. If the dining area is adjacent to a food preparation or storage area, those areas shall be effectively separated by walls and closed doors while pets are present.

D. If personal pets are permitted in the facility, the housing of those pets shall be either in a resident private room or outside the facility.

1706. Clean/Soiled Linen and Clothing (II)

A. Clean Linen/Clothing. A supply of clean, sanitary linen/clothing shall be available at all times. In order to prevent the contamination of clean linen/clothing by dust or other airborne particles or organisms, clean linen/clothing shall be stored and transported in a sanitary manner, e.g., enclosed and covered. Linen/Clothing storage rooms shall be used only for the storage of linen/clothing. Clean linen/Clothing shall be separated from storage of other purposes.

B. Soiled Linen/Clothing.

1. Soiled linen/Clothing shall neither be sorted, rinsed, nor washed outside of the laundry service area;
2. Provisions shall be made for collecting, transporting, and storing soiled linen/clothing;
3. Soiled linen/Clothing shall be kept in enclosed/covered containers;

4. Laundry operations shall not be conducted in resident rooms, dining rooms, or in locations where food is prepared, served, or stored. Freezers/refrigerators may be stored in laundry areas, provided sanitary conditions are maintained.

EXCEPTION: Residents may sort, rinse/handwash their own soiled, delicate, personal items, e.g., pantyhose, underwear, socks, handkerchiefs, clothing, accessories, heirloom linens, needlepoint, crocheted, or knitted pillows or pillowcases, or other similar items personally owned and cared for by the resident, in a private bathroom sink, provided the practice does not create a safety hazard, e.g., water on the floor.

SECTION 1800 - QUALITY IMPROVEMENT PROGRAM

1801. General (II)

A. There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care/services provided by the facility.

B. The quality improvement program, as a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is regularly, systematically, and objectively accomplished;
2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;
3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;
4. Establish ways to measure the quality of resident care and staff performance as well as the degree to which the policies and procedures are followed;
5. Analyze the appropriateness of ICP's and the necessity of care/services rendered;

6. Analyze the effectiveness of the fire plan;
7. Analyze all incidents and accidents, to include all medication errors and resident deaths;
8. Analyze any infection, epidemic outbreaks, or other unusual occurrences which threaten the health, safety, or well-being of the residents;
9. Establish a systematic method of obtaining feedback from residents and other interested persons, e.g., family members and peer organizations, as expressed by the level of satisfaction with care/services received.

SECTION 1900 - DESIGN AND CONSTRUCTION

1901. General (II)

A. A facility shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each resident. Facility design shall be such that all residents have access to required services. There shall be 200 gross square feet per licensed bed in facilities 10 beds or less, and in facilities licensed for more than 10 beds, an additional 100 gross square feet per licensed bed.

B. Facilities licensed for five beds or less shall be classified as Residential Occupancy and shall follow the requirements of the Standard Building Code (SBC) for Residential Occupancy.

C. Facilities licensed for six beds or more shall follow the requirements of the SBC for Residential R-4 Occupancy and the requirements for dormitories.

D. Facilities housing six or more residents who are incapable of self-preservation shall meet the requirements of the SBC for Institutional Occupancy.

1902. Local and State Codes and Standards (II)

A. Buildings shall comply with pertinent local and state laws, codes, ordinances, and standards with reference to design and construction. No facility shall be licensed unless the Department has assurance that responsible local officials (zoning and building) have approved the facility for code compliance.

B. The Department utilizes the basic codes indicated in Section 102.B.

C. Buildings designed in accordance with the above-mentioned codes shall be acceptable to the Department provided the requirements set forth in this regulation are also met.

1903. Construction/Systems (II)

A. All buildings of facilities, new and existing, being licensed for the first time, or changing their license to provide a different service, shall meet the current codes and regulations.

B. Unless specifically required otherwise in writing by the Department's Division of Health Facilities Construction (DHFC), all existing facilities shall meet the construction codes and regulations for the building and its essential equipment and systems in effect at the time the license was issued. Except for proposed facilities that

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have received a current and valid written approval to begin construction, current construction codes, regulations, and requirements shall apply to those facilities licensed after the date of promulgation of these regulations.

C. Any additions or renovations to an existing licensed facility shall meet the codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of the addition or renovation. When the cost of additions or renovations to the building exceeds 50% of the then market value of the existing building and its essential equipment and systems, the building shall meet the then current codes, regulations, and requirements.

D. Buildings of facilities under construction at the time of promulgation of these regulations shall meet the codes, regulations, and requirements in effect at the time of the plan's approval.

E. Any facility that closes or has its license revoked, and for which application for re-licensure is made at the same site, shall be considered a new building and shall meet the current codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of application for re-licensing.

1904. Submission of Plans and Specifications

A. New Buildings, Additions, or Major Alterations to Existing Buildings.

1. In all new construction or existing structures proposed to be licensed by the Department, plans and specifications shall be submitted to DHFC for review and approval.

2. Where the SBC or other regulations require fire-rated walls or other fire-rated structural elements, these plans and specifications shall be prepared by an architect and shall bear his/her seal. Plans for a facility with five beds or less shall be drawn to scale; however, preparation by an architect is not required.

3. Construction of, or within buildings of 5000 square feet or more, or three stories or more in height, and involving construction of fire-rated assemblies, must, in addition to Section 1904.A.2 above, provide the Minimum Construction Administration Services, as defined in Regulation 11-12, Code of Professional Ethics, published by The Board of Architectural Examiners, S.C. Department of Labor, Licensing, and Regulation.

4. When construction is contemplated for additions or alterations to existing licensed buildings, the facility shall contact DHFC regarding code and regulatory requirements that apply to that project. Plans and specifications shall be submitted to that division for review.

5. All plans shall be drawn to scale with the title, location, and date indicated thereon.

6. Construction work shall not begin until approval of the final drawings or written permission has been received from DFHC. Any construction deviations from the approved documents shall be approved by DFHC.

B. Plans and specifications are reviewed as necessary to obtain a set of approvable drawings showing all necessary information. These reviews may be, but are not required to be, in three stages: Preliminary, Design Development, and Final.

1. Preliminary submission shall include the following:

a. Plot plan showing:

(1) Size and shape of entire site;

(2) Footprint showing orientation and location of proposed building;

(3) Location and description of any existing structures, adjacent streets, highways, sidewalks, railroads, etc., properly designated;

(4) Size, characteristics, and location of all existing public utilities, including information concerning water supply available for fire protection, distance to nearest fire hydrant; parking; any hazardous areas, e.g., cliffs, roads, hills, railroads, industrial and/or commercial sites, and bodies of water, etc.

b. Floor plans showing blocked spaces (areas) of approximate size and shape and their relationship to other spaces.

2. Design Development drawings shall indicate the following in addition to the above:

a. Cover sheet:

(1) Title and location of the project;

(2) Index of drawings;

(3) Code analysis listing applicable codes (both local jurisdiction and state);

(4) Occupancy classification per SBC;

(5) Type of construction per SBC.

b. Floor plans:

(1) Overall dimensions of buildings;

(2) Locations, size, and purpose of all rooms including furniture layout plan;

(3) Location and size of doors, windows, and other openings with swing of doors properly indicated;

(4) Life Safety plan showing all fire walls, exits, exit calculations, locations of smoke barriers if required, fire-rated walls, locations of stairs, elevators, dumbwaiters, vertical shafts, and chimneys;

(5) Fixed equipment.

c. Outline specifications that include a general description of construction including interior finishes and mechanical systems.

3. Final submission shall include the above in addition to complete working drawings and contract specifications, including layouts for site preparation and landscaping, architectural, plumbing, electrical, mechanical, and complete fire protection.

4. Requirements for Facilities That Prepare Meals.

a. For facilities of six beds or more, food service operations shall be separated from living and sleeping quarters by complete, ceiling-high walls, and solid, self-closing doors. (II)

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b. Kitchen ventilation specifications shall be in compliance with Section 2601.G.

c. For commercial kitchens (meals prepared for 16 or more persons), construction shall be in compliance with Chapter VII (A - G) of R.61-25, and a separate floor plan shall be provided depicting:

(1) Location of all equipment;

(2) Make and model number of all equipment (including a thermometer schedule). All equipment used for the preparation and storage of food shall be that approved by the NSF.

(3) Garbage can wash pad on exterior with hot and cold running water;

(4) Grease interceptor;

(5) Floor drains;

(6) Separate hand washing sinks;

(7) Toilet and locker facilities for kitchen staff/volunteers;

(8) Exhaust hood and duct system to the outside;

(9) Hood extinguishing system.

d. Plan submission for domestic kitchens (meals prepared for 15 or less persons) shall include:

(1) Location and identification of all equipment;

(2) An approved three-compartment sink in addition to a hand washing sink;

(3) An exhaust hood and fan of proper size installed over all cooking equipment and vented to the outside. Facilities that prepare meals for 13 or more persons shall have a hood extinguisher system.

5. If the start of construction is delayed for a period exceeding 12 months from the time of approval of final submission, a new evaluation and/or approval is required.

6. One complete set of "as-built" drawings shall be filed with DHFC.

SECTION 2000 - GENERAL CONSTRUCTION REQUIREMENTS

2001. Height and Area Limitations (II)

Construction shall not exceed the allowable heights and areas provided by the SBC.

2002. Fire-Resistive Rating (I)

The fire-resistive ratings for the various structural components shall comply with the SBC. Fire-resistive ratings of various materials and assemblies not specifically listed in the SBC can be found in publications of recognized testing agencies such as Underwriters Laboratories - Building Materials List and Underwriters Laboratories - Fire Resistance Directory.

2003. Vertical Openings (I)

All vertical openings shall be protected in accordance with applicable sections of the SBC, State Fire Marshal Regulations, and NFPA 101.

2004. Wall and Partition Openings (I)

All wall and partition openings shall be protected in accordance with applicable sections of the SBC and NFPA 101.

2005. Ceiling Openings (I)

Openings into attic areas or other concealed spaces shall be protected by material consistent with the fire rating of the assembly they penetrated.

2006. Firewalls (I)

A. A building is defined by the outside walls and any interior four-hour firewalls and shall not exceed the height and area limitations set forth in the SBC for the type of construction.

B. An addition shall be separated from an existing building by a two-hour, fire-rated wall, unless the addition is of equal fire-resistive rating.

C. When an addition is to be constructed of a different type of construction from the existing building, the type of construction and resulting maximum area and height limitations allowed by the SBC shall be determined by the lesser of the types of construction of the building.

D. If the addition is separated by a four-hour firewall, the addition is considered as a separate building, and the type of construction of the addition shall determine the maximum area and height limitations.

2007. Floor Finishes (II)

A. Floor coverings and finishes shall meet the requirements of the SBC.

B. All floor coverings and finishes shall be appropriate for use in each area of the facility and free of hazards, e.g., slippery surfaces. Floor finishes shall be composed of materials that permit frequent cleaning, and when appropriate, disinfection.

2008. Wall Finishes (I)

A. Wall finishes shall meet the requirements of the SBC.

B. Manufacturers' certifications or documentation of treatment for flame spread and other safety criteria shall be furnished and maintained.

2009. Curtains and Draperies (II)

In bathrooms and resident rooms, window treatments shall provide privacy.

SECTION 2100 - HAZARDOUS ELEMENTS OF CONSTRUCTION

2101. Furnaces and Boilers (I)

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Furnaces and boilers shall be maintained in accordance with the applicable provisions of NFPA 31, 70, 85C, and 86.

2102. Dampers (I)

Smoke and fire dampers shall be installed on all heating, ventilating, and air conditioning systems as required by NFPA 90A and the SBC.

SECTION 2200 - FIRE PROTECTION EQUIPMENT AND SYSTEMS

2201. Firefighting Equipment (I)

A. Fire extinguishers shall be sized, located, installed, and maintained in accordance with NFPA No. 10, except that portable fire extinguishers intended for use in resident sleeping areas shall be of the 2-A, 2-1/2 gallon, stored-pressure water type.

B. At least one 4-A: 20-BC-type fire extinguisher shall be installed in the following hazardous areas:

1. Laundry;
2. Furnace room;
3. Any other area having a high-risk fire hazard.

C. At least one 2-A: 10-BC-type fire extinguisher shall be located within 25 feet of exits and no more than 75 feet travel distance.

D. The kitchen shall be equipped with a minimum of one K-type and one 20-BC-type fire extinguisher.

2202. Automatic Sprinkler System (I)

A. An automatic sprinkler system shall be required for all facilities with six or more licensed beds in accordance with the requirements of the SBC under Residential R-4 Occupancy.

B. The sprinkler system shall meet the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, or when permitted by SBC, NFPA 13R, Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height.

C. All sprinkler systems, wet and dry, shall have remote inspection/test ports.

D. Facilities that house four or more residents who may require physical assistance to exit the building shall be fully-sprinklered in accordance with NFPA 13.

E. Facilities with a soiled linen storage room over 100 square feet in size shall have an approved automatic sprinkler system unless contained in a separate building.

2203. Fire Alarms (I)

A. When a fire alarm system is required, it shall be provided in accordance with provisions of National Fire Alarm Code (NFPA 72), the SBC, and the State Fire Marshal Regulations.

B. The system shall be arranged to transmit an alarm automatically to the fire department by an approved method.

C. The alarm system shall notify by audible and visual alarm all areas and floors of the building.

D. The alarm system shall cause the central re-circulating ventilation fans that serve the area(s) of alarm origination to cease operation and to shut the associated smoke dampers.

E. The fire alarm pull-station shall be placed in an area in accordance with NFPA 72.

F. All fire, smoke, heat, sprinkler-flow, fire-sensing detectors, manual pull-stations, hold-open devices on fire-rated doors, alarming devices, or other fire-related systems, shall be connected to and monitored by the main fire alarm system, and activate the general alarm when any of these devices are activated.

G. The fire alarm system shall have the main fire alarm located at a readily accessible location. An audible/visual trouble indicator shall be located where it can be observed by staff members/volunteers.

H. The fire alarm system shall be tested initially by an individual licensed to install fire alarms, and at least annually thereafter.

I. When a fire alarm system is required and smoke detectors are placed in resident sleeping rooms, there shall be an indicator light in the hall outside the door of the room to indicate when that smoke detector is activated.

EXCEPTION: When the fire alarm system is fully addressable and there are sufficient annunciator panel(s) such that travel distance in any hall to an annunciator panel does not exceed 50 feet, and the annunciator panel will indicate the activated smoke detector by location, the light over the door in the hall is not required.

2204. Smoke Detectors (I)

Smoke detectors shall be installed in accordance with NFPA 72, State Fire Marshal Regulations, and the SBC.

2205. Flammable Liquids (I)

The storage and handling of flammable liquids shall be in accordance with NFPA 30 and 99.

2206. Gases (I)

A. Gases, i.e., flammable and nonflammable, shall be handled and stored in accordance with the provisions of NFPA 99 and 101.

B. Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. "No Smoking" signs shall be posted conspicuously, and cylinders shall be properly secured in place.

2207. Furnishings/Equipment (I)

A. The physical plant shall be maintained free of fire hazards or impediments to fire prevention.

B. No portable electric or unvented fuel heaters shall be permitted in the facility.

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C. Fireplaces and fossil-fuel stoves, e.g., wood-burning, shall have partitions or screens or other means to prevent burns. Fireplaces shall be vented to the outside. "Unvented" type gas logs are not allowed. Gas fireplaces shall have a remote gas shutoff within the room and not inside the fireplace.

D. Wastebaskets, window dressings, portable partitions, cubicle curtains, mattresses, and pillows shall be noncombustible, inherently flame-resistant, or treated or maintained flame-resistant in accordance with NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films.

EXCEPTION: Window blinds require no flame treatments or documentation thereof.

SECTION 2300 - EXITS

2301. Number and Locations of Exits (I)

A. Exits, corridors, doors, stairs, ramp, and smoke partitions shall be provided, installed, and maintained in accordance with the provisions of NFPA 101 and the SBC.

B. Rooms and/or suites greater than 1000 square feet shall have at least two exit access doors remote from each other.

C. If exit doors and cross-corridor doors are locked, the requirements for Special Locking Arrangements in the SBC shall be met.

D. Where it can be demonstrated that the provision of the required "irreversible opening upon a delay," as described in SBC, will create a security problem, an alternate method of locking cross corridor and exit doors may be used, provided the following requirements are met:

1. Unlocked exit doors will create a security problem as determined by the facility based upon the condition of residents in the facility;

2. The locking system complies with the requirements in the SBC for Special Locking Arrangements except the requirement for an "irreversible opening upon delay;"

3. The exit doors can be released electrically by staff members/volunteers by a switch(s) or button(s) located at a nearby control point that is not locked;

4. At each locked door, there shall be a key-operated switch that will unlock the door; a keypad may be used for unlocking the door, but this keypad shall not negate the requirement for a key-operated switch;

5. All staff members/volunteers working in the area carry a readily identifiable (by sight and touch) key on their person;

6. Written approval has been granted by DHFC.

E. Fire alarm pull-stations may be locked if all staff members/volunteers working in the area carry on their person a readily identifiable (by sight and touch) key, and there is an unlocked pull-station centrally located in the facility.

F. Halls, corridors and all other means of egress from the building shall be maintained free of obstructions.

G. Those residents that may require physical or verbal assistance to exit the building shall not be located above or below the floor of exit discharge.

H. Each resident room shall open directly to an approved exit access corridor without passage through another occupied space or shall have an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances.

EXCEPTION: When two resident rooms share a common “sitting” area that opens onto the exit access corridor.

SECTION 2400 - WATER SUPPLY/HYGIENE

2401. Design and Construction (II)

A. A water distribution system, provided by a public or private source, shall be approved by the Department’s Bureau of Water before the facility can be constructed and/or placed into operation. (I)

B. Before the construction, expansion, or modification of a water distribution system, application shall be made to the Department for a Permit for Construction. The application shall include such engineering, chemical, physical, or bacteriological data as may be required by the Department and shall be accompanied by engineering plans, drawings, and specifications prepared by an engineer registered in S.C. and shall include his/her signature and official seal.

C. In general, the design and construction of such systems shall be in accordance with standard engineering practices for such installations. The Department shall establish such rules, regulations, and/or procedures as may be necessary to protect the health of the public and to insure proper operation and functioning of the system. The facility’s water system shall be in compliance with R.61-58 and other local, state, and federal laws and regulations.

D. Resident and staff hand washing lavatories and resident showers/tubs shall be supplied with hot and cold water at all times.

E. Storage tanks shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

2402. Disinfection of Water Lines (I)

A. After construction, expansion, or modification, a water distribution system shall be disinfected in accordance with R.61-58.

B. Samples shall be taken from the water system and forwarded to an approved laboratory for bacteriological analysis in accordance with R.61-58. The water shall not be used as a potable supply until certified as satisfactory.

2403. Temperature Control (I)

A. Plumbing fixtures that require hot water and which are accessible to residents shall be supplied with water that is thermostatically controlled to a temperature of at least 100 degrees F. and not to exceed 120 degrees F. at the fixture.

B. The water heater or combination of heaters shall be sized to provide at least six gallons per hour per bed at the above temperature range. (II)

C. Hot water supplied to the kitchen equipment/utensil washing sink shall be supplied at 120 degrees F. provided all kitchen equipment/utensils are chemically sanitized. For those facilities sanitizing with hot water, the sanitizing compartment of the kitchen equipment/utensil washing sink shall be capable of maintaining the water at a temperature of at least 180 degrees F.

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D. Hot water provided for washing linen/clothing shall not be less than 160 degrees F. Should chlorine additives or other chemicals which contribute to the margin of safety in disinfecting linen/clothing be a part of the washing cycle, the minimum hot water temperature shall not be less than 110 degrees F., provided hot air drying is used. (II)

2404. Stop Valves

Each plumbing fixture shall have stop valves to permit repairs without disrupting service to other fixtures. Each group of fixtures on a floor, each branch main, and each supply line shall be valved.

2405. Cross-connections (I)

There shall be no cross-connections in plumbing between safe and potentially unsafe water supplies. Water shall be delivered at least two delivery pipe diameters above the rim or points of overflow to each fixture, equipment, or service unless protected against back-siphonage by approved vacuum breakers or other approved back-flow preventers. A faucet or fixture to which a hose may be attached shall have an approved vacuum breaker or other approved back-flow preventer.

2406. Design and Construction of Wastewater Systems (I)

A. A wastewater system, provided by a public or private source, shall be approved by the Department's Bureau of Water before the facility can be constructed and/or begins operation.

B. Plans, specifications, reports and studies, for the construction, expansion or alteration of a wastewater system shall be prepared by an engineer registered in S.C. and shall carry his/her signature and official seal.

C. The design and construction of wastewater systems shall be in accordance with standard engineering practice and R.61-67.

D. The wastewater system for commercial kitchens shall be in accordance with R.61-25.

E. Liquid waste shall be disposed of in a wastewater system approved by the local authority, e.g., sewage treatment facility.

SECTION 2500 - ELECTRICAL

2501. General (I)

A. Electrical installations shall be in accordance with the NFPA 70 and 99.

B. Wiring shall be inspected at least annually by a licensed electrician, registered engineer, or certified building inspector.

C. All materials shall be listed as complying with available standards of Underwriters Laboratories, Inc. or other similarly established standards.

D. New systems shall be tested to indicate that the equipment is installed and operates as planned or specified.

2502. Panelboards (II)

Panelboards shall be in accordance with NFPA 70. Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits served. This requirement does not apply to life safety system circuits. The

directory shall be labeled to conform to the actual room designations. Clear access to the panel shall be maintained, as per NFPA 70. The panelboard directory shall be labeled to conform to the actual room numbers or designations.

2503. Lighting

A. Spaces occupied by persons, machinery, equipment within buildings, approaches to buildings, and parking lots shall be lighted. (II)

B. Adequate artificial light shall be provided to include sufficient illumination for reading, observation, and activities. There shall be a minimum of 35 foot-candles in areas used for reading, study, or close work. Lighting in work areas shall not be less than 30 foot-candles.

C. Resident rooms shall have general lighting that provides a minimum of 20 foot-candles in all parts of the room, and shall have at least one light fixture for night lighting. A reading light shall be provided for each resident. The switches to the general and night lighting shall be located at the strike side of the entrance door in each resident room and shall be of the quiet operating type.

D. All food preparation areas, equipment and utensil washing areas, hand washing areas, toilet areas for kitchen staff/volunteers, walk-in refrigeration units, dry food storage areas, and dining areas during cleaning operation shall be lighted in accordance with R.61-25.

E. Hallways, stairs, and other means of egress shall be lighted at all times in accordance with NFPA 101, i.e., at a minimum, an average of one foot-candle at floor level. (I)

2504. Receptacles (II)

A. Resident Room. Each resident room shall have duplex grounding type receptacles located per NFPA 70, to include one at the head of each bed.

B. Corridors. Duplex receptacles for general use shall be installed approximately 50 feet apart in all corridors and within 25 feet of the ends of corridors.

2505. Ground Fault Protection (I)

A. Ground fault circuit-interrupter protection shall be provided for all outside receptacles and bathrooms in accordance with the provisions of NFPA 70.

B. Ground fault circuit-interrupter protection shall be provided for any receptacles within six feet of a sink or any other wet location. If the sink is an integral part of the metal splashboard grounded by the sink, the entire metal area is considered part of the wet location.

2506. Exit Signs (I)

A. In facilities licensed for six or more beds, required exits and ways to access thereto shall be identified by electrically-illuminated exit signs bearing the words "Exit" in red letters, six inches in height, on a white background.

B. Changes in egress direction shall be marked with exit signs with directional arrows.

C. Exit signs in corridors shall be provided to indicate two directions of exit.

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2507. Emergency Electric Service (I)

Emergency electric services shall be provided as follows:

- A. Exit lights, if required;
- B. Exit access corridor lighting;
- C. Illumination of means of egress;
- D. Fire detection and alarm systems, if required.

SECTION 2600 – HEATING, VENTILATION, AND AIR CONDITIONING

2601. General (II)

- A. Heating, ventilation, and air conditioning (HVAC) systems shall comply with NFPA 90A and all other applicable codes.
- B. The HVAC system shall be inspected at least once a year by a certified/licensed technician.
- C. The facility shall maintain a temperature of between 72 and 78 degrees F. in resident areas.
- D. No HVAC supply or return grill shall be installed within three feet of a smoke detector. (I)
- E. HVAC grills shall not be installed in floors.
- F. Intake air ducts shall be filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials. The system shall not discharge in such a manner that would be an irritant to the residents/staff/volunteers.
- G. All kitchen areas shall be adequately ventilated in order for all areas to be kept free from excessive heat, steam, condensation, vapors, smoke, and fumes.
- H. Each bath/restroom shall have either operable windows or have approved mechanical ventilation.

SECTION 2700 - PHYSICAL PLANT

2701. Facility Accommodations/Floor Area (II)

A. The facility shall provide an attractive, homelike, and comfortable environment. There shall be homelike characteristics throughout the facility such as, but not limited to, pictures, books, magazines, clocks, plants, current calendars, stereos, television, and appropriate holiday or seasonal decorations. Consideration shall be given to the preferences of the residents in determining an appropriate homelike atmosphere in resident rooms and activity/dining areas.

B. There shall be sufficient living arrangements providing for residents entertainment, or recreation, to include living, dining, and recreational areas available for residents' use. quiet reading

C. Minimum square footage requirements shall be as follows: (II)

1. Twenty square feet per licensed bed of living and recreational areas combined, excluding bedrooms, halls, kitchens, dining rooms, bathrooms, and rooms not available to the residents;

2. Fifteen square feet of floor space in the dining area per licensed Bed.

D. All required care/services furnished at the facility shall be provided in a manner which does not require residents to ambulate from one site to another outside the building(s), nor which impedes residents from ambulating from one site to another due to the presence of physical barriers.

E. Methods for ensuring visual and auditory privacy between resident and staff/volunteers/visitors shall be provided as necessary.

2702. Resident Rooms

A. A resident shall have the choice to furnish his/her room. Whether the resident or the facility furnishes the room, each resident room shall be equipped with the following as a minimum for each resident:

1. A comfortable single bed having a mattress with moisture-proof cover, sheets, blankets, bedspread, pillow, and pillowcases; roll-away type beds, cots, bunkbeds, and folding beds shall not be used. It is permissible to remove a resident bed and place the mattress on a platform or pallet provided the physician or other authorized healthcare provider has approved and the decision is documented in the ICP. (II)

EXCEPTION: In the case of a married couple sharing the same room, a double bed is permitted if requested. For all other requirements, this shall be considered a bedroom with two beds.

2. A closet or wardrobe, a bureau consisting of at least three drawers, and a compartmentalized bedside table/nightstand to adequately accommodate each resident's personal clothing, belongings, and toilet articles. Built-in storage is permitted.

EXCEPTION: In existing facilities, if square footage is limited, residents may share these storage areas; however, specific spaces within these storage areas shall be provided particular to each resident.

3. A comfortable chair for each resident occupying the room. In facilities licensed prior to the promulgation of this regulation, if the available square footage of the resident room will not accommodate a chair for each resident or if the provision of multiple chairs impedes resident ability to freely and safely move about within their room, at least one chair shall be provided and provisions made to have additional chairs available for temporary use in the resident's room by visitors.

B. If hospital-type beds are used, there shall be at least two lockable casters on each bed, located either diagonally or on the same side of the bed.

C. Beds shall not be placed in corridors, solaria, or other locations not designated as resident room areas. (I)

D. No resident room shall contain more than three beds. (II)

E. No resident room shall be located in a basement.

F. Access to a resident room shall not be by way of another resident room, toilet, bathroom, or kitchen.

EXCEPTION: Access to a resident room through the kitchen is permissible in facilities licensed for five beds or less.

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G. Equipment such as bedpans, urinals, and hot water bottles, necessary to meet resident needs, shall be provided. Portable commodes shall be permitted in resident rooms only at night or in case of temporary illness, and suitably stored at all other times. (II)

EXCEPTION: Permanent positioning of a portable commode at bedside shall only be permitted if the room is private, the commode is maintained in a sanitary condition, and the room is of sufficient size to accommodate the commode.

H. Side rails may be utilized when required for safety and when ordered by a physician or other authorized healthcare provider. When there are special concerns, e.g., residents with Alzheimer's disease and/or related dementia, side rail usage shall be monitored by staff members as per facility policies and procedures. (I)

I. In semi-private rooms, when personal care is being provided, arrangements shall be made to ensure privacy, e.g., portable partitions or cubicle curtains when needed or requested by a resident.

J. There shall be at least one full-length mirror in each resident room.

EXCEPTION: When a resident's condition is such that having a mirror may be detrimental to his/her well-being, e.g., agitation and confusion associated with Alzheimer's disease and/or related dementia, full-length mirrors are not required.

K. Consideration shall be given to resident compatibility in the assignment of rooms for which there is multiple occupancy.

L. At least one private room shall be available in the facility in order to provide assistance in addressing resident compatibility issues, resident preferences, and accommodations for residents with communicable disease.

2703. Resident Room Floor Area

A. Except for facilities with five beds or less, each resident room is considered a tenant space and shall be enclosed by one-hour fire-resistive construction with a 20-minute fire-rated door, opening onto an exit access corridor. (I)

B. Each resident room shall be an outside room with an outside window or door for exit in case of emergency. This window or door shall not open onto a common area screened porch. (I)

C. The resident room floor area is a usable or net area and does not include wardrobes (built-in or freestanding), closets, or the entry alcove to the room. The following is the minimum floor space allowed: (II)

1. Rooms for only one resident: 100 square feet;
2. Rooms for more than one resident: 80 square feet per resident.

D. There shall be at least three feet between beds. (II)

2704. Bathrooms/Restrooms (II)

A. Separate bathroom facilities shall be provided for live-in staff members/volunteers and/or family.

B. In bath/restrooms, the restroom floor area shall not be less than 15 square feet.

C. Toilets shall be provided in ample number to serve the needs of staff members/volunteers. The minimum number for residents shall be one toilet for each six licensed beds or fraction thereof.

D. There shall be at least one lavatory adjacent to each toilet. Liquid soap shall be provided in public restrooms and bathrooms used by more than one resident. A sanitary individualized method of drying hands shall be available at each lavatory.

E. There shall be one bathtub or shower for each eight licensed beds or fraction thereof.

F. All bathtubs, toilets, and showers used by residents shall have approved grab bars securely fastened in a usable fashion.

G. Privacy shall be provided at toilets, urinals, bathtubs, and showers.

H. Toilet facilities shall be conveniently located for kitchen employees. The doors of all toilet facilities located in the kitchen shall be self-closing.

I. Facilities for handicapped persons shall be provided as per the SBC whether or not any of the residents are classified as handicapped.

J. All bathroom floors shall be entirely covered with an approved nonabsorbent covering. Walls shall be nonabsorbent, washable surfaces to the highest level of splash.

K. There shall be a mirror above each bathroom lavatory for residents' grooming.

L. An adequate supply of toilet tissue shall be maintained in each bathroom.

M. Easily cleanable receptacles shall be provided for waste materials. Such receptacles in toilet rooms for women shall be covered.

N. Bar soap, bath towels, and washcloths shall be provided to each resident as needed. Bath linens assigned to specific residents may not be stored in centrally located bathrooms. Provisions shall be made for each resident to properly keep their bath linens in their room, i.e., on a towel hook/bar designated for each resident occupying that room, or bath linens to meet resident needs shall be distributed as needed, and collected after use and stored properly, per Section 1706.

EXCEPTION: Bath linens assigned to specific residents for immediate use may be stored in the bathroom provided the bathroom serves a single occupancy (one resident) room, or is shared by occupants of adjoining rooms, for a maximum of six residents. A method that distinguishes linen assignment and discourages common usage shall be implemented.

2705. Doors (II)

A. All resident rooms and bath/restrooms shall have opaque doors for the purpose of privacy.

B. All glass doors, including sliding or patio type doors shall have a contrasting or other indicator that causes the glass to be observable, e.g., a decal located at eye level.

C. Exit doors required from each floor shall swing in the direction of exit travel. Doors, except those to spaces such as small closets, which are not subject to occupancy, shall not swing into corridors in a manner that obstructs corridor traffic flow or reduces the corridor width to less than one-half the required width during the opening process.

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EXCEPTION: Not applicable to facilities with five or less beds not built to institutional standards.

D. Doorways from exit-access passageways to the outside of the facility shall be at least 80 inches in height.

E. Door widths on exit doors shall be in accordance with the SBC.

F. Bath/restroom door widths shall be at least 32 inches wide.

G. Doors to resident occupied rooms shall be at least 32 inches wide.

H. Doors that have locks shall be unlockable and openable with one action.

I. If resident room doors are lockable, there shall be provisions for emergency entry. There shall not be locks that cannot be unlocked and operated from inside the room (see Section 2301.D).

J. All resident room doors shall be solid-core; facilities licensed for six beds or more shall have 20-minute doors with closures.

K. Soiled linen storage room over 100 square feet shall be of one-hour, fire-resistive construction with "C" labeled 3/4-hour door.

2706. Elevators (II)

A. Elevators, if utilized, shall be installed and maintained in accordance with the provisions of the SBC, ANSI17.1 Safety Code for Elevators and Escalators, and NFPA 101, if applicable.

B. Elevators shall be inspected and tested upon installation, prior to first use, and annually thereafter by a certified elevator inspector.

2707. Corridors (II)

A. Corridor width requirements shall be as follows:

1. Less than six licensed beds - not less than 36 inches;
2. Six to 10 licensed beds - not less than 40 inches;
3. Over 10 licensed beds - not less than 44 inches.

B. Corridors and passageways in all facilities shall be in accordance with the SBC.

2708. Ramps (II)

A. At least one exterior ramp, accessible by all residents, staff members/volunteers, and visitors shall be installed from the first floor to grade.

B. The ramp shall serve all portions of the facility where residents are located.

C. The surface of a ramp shall be of nonskid materials.

D. Ramps shall be constructed in a manner in compliance with ANSI 117.1, i.e., for every inch of height, the ramp shall be at least one foot long.

E. Ramps in facilities with 11 or more licensed beds shall be of noncombustible construction. (I)

F. Ramps shall discharge onto a surface that is firm and negotiable by persons who are physically challenged in all weather conditions and to a location accessible for loading into a vehicle.

2709. Landings (II)

Exit doorways shall not open immediately upon a flight of stairs. A landing shall be provided that is at least the width of the door and is the same elevation as the finished floor at the exit. (II)

2710. Handrails/Guardrails (II)

A. Handrails shall be provided on at least one side of each corridor/hallway, and on all stairways, ramps, and porches with two or more steps. Ends of all installed handrails shall return to the wall.

EXCEPTION: In facilities with 10 beds or less, handrails are not required for interior halls.

B. All porches, walkways, and recreational areas (such as decks, etc.) that are elevated 30 inches or more above grade shall have guardrails 42 inches high. Open guardrails shall have intermediate rails through which a six-inch diameter sphere cannot pass.

2711. Screens (II)

Windows, doors and openings intended for ventilation shall be provided with insect screens.

2712. Windows/Mirrors

A. The window dimensions and maximum height from floor to sill shall be in accordance with the SBC and the Life Safety Code, as applicable.

B. Where clear glass is used in windows, with any portion of the glass being less than 18 inches from the floor, the glass shall be of "safety" grade, or there shall be a guard or barrier over that portion of the window. This guard or barrier shall be of sufficient strength and design so that it will prevent an individual from injuring him/herself by accidentally stepping into or kicking the glass. (II)

C. Windows shall be operable at all times.

D. Where resident safety awareness is impaired, safety (non-breakable) mirrors shall be used.

2713. Janitor's Closet (II)

There shall be a lockable janitor's closet in facilities with 16 licensed beds or more. Each closet shall be equipped with a mop sink or receptor and space for the storage of supplies and equipment.

2714. Storage Areas

A. Adequate general storage areas shall be provided for resident and staff/volunteer belongings, equipment, and supplies as well as clean linen, soiled linen, wheel chairs, and general supplies and equipment.

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B. Areas used for storage of combustible materials and storage areas exceeding 100 square feet in area shall be provided with an NFPA-approved automatic sprinkler system. (I)

C. In storage areas provided with a sprinkler system, a minimum vertical distance of 18 inches shall be maintained between the top of stored items and the sprinkler heads. The tops of storage cabinets and shelves attached to or built into the perimeter walls may be closer than 18 inches below the sprinkler heads. In nonsprinklered storage areas, there shall be at least 24 inches of space from the ceiling. (I)

D. All ceilings, floor assemblies, and walls enclosing storage areas of 100 square feet or greater shall be composed of not less than one-hour fire-resistive construction with "C" labeled 3/4-hour fire-rated door(s) and closer(s). (I)

E. Storage buildings on the premises shall meet the SBC requirement regarding distance from the licensed building. Storage in buildings other than on the facility premises shall be secure and accessible. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

F. In mechanical rooms used for storage, the stored items shall be located away from mechanical equipment and shall not be a type of storage that might create a fire or other hazard. (I)

G. Supplies/equipment shall not be stored directly on the floor. Supplies/equipment susceptible to water damage/contamination shall not be stored under sinks or other areas with a propensity for water leakage.

H. In facilities licensed after the promulgation of these regulations with 16 beds or more, there shall be a soiled linen storage room which shall be designed, enclosed, and used solely for that purpose, and provided with mechanical exhaust directly to the outside.

2715. Telephone Service

A. At least one telephone shall be available on each floor of the facility for use by residents and/or visitors for their private, discretionary use; pay phones for this purpose are acceptable. Telephones capable of only local calls are acceptable for this purpose, provided other arrangements exist to provide resident/visitor discretionary access to a telephone capable of long distance service.

B. At least one telephone shall be provided on each floor for staff members/volunteers to conduct routine business of the facility and to summon assistance in the event of an emergency; pay station phones are not acceptable for this purpose.

2716. Location

A. Transportation. The facility shall be served by roads that are passable at all times and are adequate for the volume of expected traffic.

B. Parking. The facility shall have a parking area to reasonably satisfy the needs of residents, staff members/volunteers, and visitors.

C. Access to firefighting equipment. Facilities shall maintain adequate access to and around the building(s) for firefighting equipment. (I)

2717. Outdoor Area

A. Outdoor areas where unsafe, unprotected physical hazards exist shall be enclosed by a fence or a natural barrier of a size, shape, and density that effectively impedes travel to the hazardous area. Such areas include but are not limited to steep grades, cliffs, open pits, high voltage electrical equipment, high speed or heavily traveled roads, and/or roads exceeding two lanes, excluding turn lanes, ponds and swimming pools. (I)

B. Where required, fenced areas that are part of a fire exit from the building shall have a gate in the fence that unlocks in case of emergency per Special Locking Arrangements in the SBC. (I)

C. Mechanical or equipment rooms that open to the outside of the facility shall be kept protected from unauthorized individuals. (II)

D. If a swimming pool is part of the facility, it shall be designed, constructed, and maintained pursuant to R.61-51. (II)

E. There shall be sufficient number of outside tables and comfortable chairs to meet the needs of the residents.

SECTION 2800 - SEVERABILITY

2801. General

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

SECTION 2900 - GENERAL "GENERAL" \b

2901. General

Conditions that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

Fiscal Impact Statement:

There will be no additional cost to the state and its political subdivisions. Although there will be an increase in licensing fees, costs to the regulated community will still be minimum.

Statement of Need and Reasonableness:

This statement was determined by staff analysis pursuant to S.C. code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: R.61-84, Standards For Licensing Community Residential Care Facilities

Purpose of Regulation Amendment: This amendment will extricate applicability to facilities that treat those with chemical dependency and addiction from R.61-84. Concurrently, DHEC has proposed to consolidate the

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standards for all of the alcohol and drug abuse treatment facilities that DHEC now licenses into one regulation (R.61-93); alcohol and drug abuse treatment programs within existing hospitals will continue to be licensed under the hospital regulation (R.61-16). The Department proposes to amend R.61-84 to update and enhance the regulations. In addition, this amendment will: update and expand definitions/interpretations; clarify licensing change requirements; update licensing fee amounts; describe inspection reporting requirements; add reference to DHEC consultations; update and clarify and update classification of standards and enforcement action procedures; update staffing standards; update physical plant/structural requirements; add quality improvement standards; reword sections related to care and services; reword sections regarding resident record content and maintenance; update tuberculosis screening requirements; update medication management requirements; update meal service requirements add reporting requirements; enhance resident rights/assurances requirements; reword sections regarding resident record content and maintenance; expand/update emergency preparedness requirements; enhance fire prevention requirements; and add a severability clause. The proposed amendment will rewrite the regulation in its entirety. See Determination of Need and Reasonableness below.

Legal Authority: Sections 44-7-250 and 44-7-260(A)(6) of the S.C. Code.

Plan for Implementation: The proposed amendment will take effect upon publication in the *State Register* following approval by the Board of Health and Environmental Control and the S.C. General Assembly. The proposed amendment will be implemented by providing the regulated community with copies of the regulation.

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

R.61-84 was last amended in 1991. Section 1-23-120 of the S.C. Code (Administrative Procedures Act) requires state agencies to perform a review of its regulations every five years and update them if necessary.

The proposed amendment is needed and reasonable because it will extricate applicability to those sections of R.61-84 that are being applied to facilities that treat those with chemical dependency and addiction. This is part of the Department's plan to ultimately consolidate facilities treating the chemically dependent and addicted into one regulation pursuant to Section 44-7-130(14) of the S.C. Code as it describes a "Facility for chemically dependent or addicted persons." Alcohol and drug abuse treatment programs within existing hospitals will continue to be licensed under the hospital regulation (R.61-16).

The proposed amendment is needed and reasonable because it will bring the regulation into compliance with the legislative proviso to emphasize quality improvement programs within community residential care facilities.

The proposed amendment is needed and reasonable in order to update and improve the overall quality of the regulation.

The proposed amendment is needed and reasonable because it will clarify/add to the current regulation in a manner that will improve individual agency methods to provide quality care/service to residents.

The proposed amendment is needed and reasonable because it will update the current regulation by incorporating certain exceptions/guidances that the Department has implemented since the last revision.

As a result of the review of this regulation, statutory mandates, and need to update and improve the overall quality of the regulation, the proposed amendment is needed and reasonable. The proposed amendment will clarify/add to the current regulation in a manner that will improve individual facility methods to provide quality care/service to residents.

DETERMINATION OF COSTS AND BENEFITS: No additional cost to the state and its political subdivisions is expected. There will be an increase in licensing fees, and due to enhanced requirements related to the operation of facilities, additional costs to the regulated community will occur.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no effect on the environment. The revision will promote public health by encouraging local solutions to local problems (more emphasis on facility policies and procedures/quality improvement) and contribute to the upgrading of care/services within community residential care facilities.

DETRIMENTAL EFFECT ON THE ENVIRONMENT IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED: There will be no significant adverse effect on the public health if the revision is not implemented; however, 24-hour alcohol and drug abuse facilities will continue to be licensed under R.61-84, which has limited alcohol and drug abuse treatment-related standards. In addition, failure to implement will prevent the Department's compliance with the legislative proviso to enhance quality improvement-related standards in community residential care facilities.

Document No. 2615
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 48-1-10 et seq.

R61-9, Water Pollution Control Permits

Synopsis:

The Department is amending R.61-9 to comply with revisions to U.S. Environmental Protection Agency (Federal) regulations which have been made since the most-recent (1996) revisions to the South Carolina regulation. Federal regulation revisions were promulgated in the Federal Register at

62 Federal Register (FR) 38406, July 17, 1997: Administrative changes to regulations related to pretreatment (industrial discharges to Publicly Owned Treatment Works [POTW]);

64 FR 42434 and 42552, August 4, 1999: Changing storm water requirements to include Federal Phase II National Pollutant Discharge Elimination System (NPDES) regulations;

64 FR 68722, December 8, 1999: Providing new application forms and application requirements for POTW (Form 2A) and POTW and Treatment Works Treating Domestic Sewage (TWTDS) disposal of sewage sludge (Form 2S); and

65 FR 30886, May 15, 2000: Miscellaneous administrative changes.

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Many sections of the Federal regulations state specifically that equivalent state regulations are required in order for the state wastewater discharge and domestic wastewater sludge disposal permits under the National Pollutant Discharge Elimination System (NPDES) to be accepted in lieu of Federal permitting. Elsewhere, parts of the Federal regulations provide information, such as definitions, and are included in the State regulation.

As these amendments are required for compliance with Federal regulation, neither a preliminary fiscal impact statement nor a preliminary assessment report is required.

Discussion of Revisions:

R61-9.122 The National Pollutant Discharge Elimination System.

Authority	State the authority in Federal and State law for the regulation.
122.1(a)(1)	Revise the language to be more specific.
122.1(a)(2)	Eliminate the reservation of the item and add an item stating the purpose of the Part (122).
122.1(a)(3)	Add a new item further defining the purpose of the Part.
122.1(a)(4)	Add a new item mentioning other Parts of regulation which are pertinent to the program.
122.1(b)(2)	Delete the existing sub-section, and renumber existing sub-sections (3) and (4) to (2) and (3), respectively.
122.2(b)	Sequential numbering is removed from all definitions, (1) through (96), which are alphabetical. Notes are added to the item stating in which other sections of the regulation each of several additional terms are defined. Any sub-items under definitions are renumbered based on deleting definition numbers.
122.2(b)	Add a definition of "Indian country."
122.2(b)	The definition of "Publicly owned treatment works" is revised.
122.2(b)	The definition of "sludge-only facility is revised.
122.2(b)	The definition of "Treatment works treating domestic sewage" is revised.
122.2(b)	Add a definition of "TWTDS."
122.4(i)(2)	The item is revised to allow waiving of submittal by permittees of data in the Department's hands.
122.21(a)(1)	Revise the language to require an application for unpermitted facilities covered by R.61-9.503 and to eliminate the requirement for a BMP submittal, as BMP requirements are being eliminated from the regulation as storm water pollution prevention plans substitute for BMP.
122.21(a)(2)	Renumber the existing item as (a)(3) and insert a new Federal item related to application forms. Delete existing items (3), reserved, and (4), related to obsolete applications.

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R.61-9.122.21(c)(1)	The requirement for applications for proposed storm water discharges is revised to include construction activities smaller than 5 acres and to correct a reference.
R.61-9.122.21(c)(2)	The introductory language to this item is supplemented to require submittal of sludge-disposal-permit applications by TWTDS per schedules stated in succeeding revisions to the item.
R.61-9.122.21(c)(2)(i)	The existing language is deleted and a Federal requirement is added for facilities with NPDES permits.
R.61-9.122.21(c)(2)(ii)	The existing language is deleted from this existing item and the introductory language is deleted from existing item (iii). A new Federal item (ii) is added related to facilities without NPDES.
R.61-9.122.21(c)(2)(ii)(A)	The existing item is moved from existing item (iii)(A), the existing language is deleted, and a new Federal item is added relating to identifying the facility.
R.61-9.122.21(c)(2)(ii)(B)	The item is moved from existing item (iii)(B), the existing language is deleted, and a new Federal item is added relating to identifying the permit applicant.
R.61-9.122.21(c)(2)(ii)(C)	The item is moved from existing item (iii)(C), the existing language is deleted, and a new Federal item is added relating to describing the disposal practices.
R.61-9.122.21(c)(2)(ii)(D)	The item is moved from existing item (iii)(D).
R.61-9.122.21(c)(2)(ii)(E)	The item is moved from existing item (iii)(E) and language is revised by using the abbreviation TWTDS.
R.61-9.122.21(c)(2)(iii)	The item is moved from existing item (iv) and language is revised by using the abbreviation TWTDS.
R.61-9.122.21(c)(2)(iv)	The item is moved from existing item (v) and language is revised by using the abbreviation TWTDS.
R.61-9.122.21(d)(3)	The existing language is removed and the item is reserved, as the forms required in the existing language are being replaced by Form 2S.
R.61-9.122.21(e)(2) - (4)	A new Federal item is added concerning completeness of applications. Renumber existing items (2) and (3) to (3) and (4), respectively.
R.61-9.122.21(f)	The item is renumbered and language is revised to eliminate application to POTW and TWTDS as separate applications for those discharges are being required elsewhere.
R.61-9.122.21(f)(1) - (8) and R.61-9.122.21(f)(6)(i) - (ix)	The items are renumbered based on the above-mentioned renumbering.

R.61-9.122.21(g)(7)(i)	The new sub-item is divided from existing item (7) for clarity and references are revised.
R.61-9.122.21(g)(7)(ii)	The new sub-item is the remaining language divided from existing item (7) for clarity.
R.61-9.122.21(g)(7)(iii)	The item is renumbered from existing (i)(A).
R.61-9.122.21(g)(7)(iii)(A)-(G)	These items are renumbered from the existing items R.61-9.122.21(g)(7)(1)(A)(1) - (7).
R.61-9.122.21(g)(7)(iii)(G)	Spelling is corrected.
R.61-9.122.21(g)(7)(iv)	The item is renumbered from existing (i)(B).
R.61-9.122.21(g)(7)(v)	The item is renumbered from existing (ii).
R.61-9.122.21(g)(7)(v)(A)	Existing references are revised.
R.61-9.122.21(g)(7)(vi) - (viii)	The items are renumbered respectively from existing (iii) - (v).
R.61-9.122.21(g)(8)	Revise references based on above-mentioned renumbering.
R.61-9.122.21(j)	Federal additions to the introductory language are made. This refers to use by all POTW of the new Form 2A application and allows submittal of data by reference and waiver of data submittal with approval by the U.S. EPA Regional Administrator.
R.61-9.122.21(j)(1)	Existing items (1) - (4) are deleted. The item requires submittal of general information by all POTW and other applicants using Form 2A: (i) Facility identification; (ii) applicant identification; (iii) existing environmental permits; (iv) population; (v) Indian country; (vi) flow rates; (vii) description of disposal methods (outfalls, etc.).
R.61-9.122.21(j)(2)	The item requires additional information of dischargers of 0.1 million gallons per day (MGD) or greater: (i) Inflow and infiltration; (ii) a topographic map with significant facilities; (iii) a process flow diagram or description; (iv) a schedule for intended improvements.
R.61-9.122.21(j)(3)	The item requires additional information on discharges: (i) Outfall descriptions; (ii) description of receiving waters; (iii) description of treatment.
R.61-9.122.21(j)(4)	The item requires data from monitoring effluent for specific parameters.
R.61-9.122.21(j)(5)	The item requires data from monitoring of whole effluent toxicity for defined discharges.

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R.61-9.122.21(j)(6)	The item requires data concerning industrial discharges (pretreaters) to the POTW.
R.61-9.122.21(j)(7)	The item requires data concerning discharges from hazardous waste generators and from waste cleanup or remediation sites.
R.61-9.122.21(j)(8)	The item requires data on combined sewer overflows (CSO).
R.61-9.122.21(j)(9)	The item requires data on facility operational or maintenance contractors.
R.61-9.122.21(j)(10)	The item states signature requirements for applications.
R.61-9.122.21(q)	Add a new Federal sub-section describing application requirements for TWTDS. Introductory language designates who must apply. It also allows waiver of submittal of available data and, with approval of the Regional Administrator, of data which is not relevant.
R.61-9.122.21(q)(1)	This new Federal item requires submittal of a description of the facility.
R.61-9.122.21(q)(2)	This new Federal item requires submittal of a description of the applicant.
R.61-9.122.21(q)(3)	This new Federal item requires submittal of a list of environmental permits.
R.61-9.122.21(q)(4)	This new Federal item requires submittal of any information about Indian country.
R.61-9.122.21(q)(5)	This new Federal item requires submittal of a topographic map showing disposal areas.
R.61-9.122.21(q)(6)	This new Federal item requires submittal of information on sewage sludge handling.
R.61-9.122.21(q)(7)	This new Federal item requires submittal of information on sewage sludge quality.
R.61-9.122.21(q)(8)	This new Federal item requires submittal of information on preparation of sewage sludge.
R.61-9.122.21(q)(9)	This new Federal item requires submittal of information on land application of bulk sewage sludge.
R.61-9.122.21(q)(10)	This new Federal item requires submittal of information on surface disposal of sewage sludge.
R.61-9.122.21(q)(11)	This new Federal item requires submittal of information on incineration of sewage sludge.

R.61-9.122.21(q)(12)	This new Federal item requires submittal of information on disposal of sewage sludge in a municipal solid waste landfill.
R.61-9.122.21(q)(13)	This new Federal item requires submittal of information on operational or maintenance contractors for sewage sludge facilities.
R.61-9.122.21(q)(14)	This new Federal item requires submittal of additional information which the Department concludes is necessary for permitting.
R.61-9.122.21(q)(15)	This new Federal item requires appropriate certifications and signatures on applications.
R.61-9.122.22(a)(1)(ii)	The item is revised to allow more flexibility in determining which facility managers may sign an application.
R.61-9.122.26(a)(9)	Add a new Federal item requiring that dischargers of storm water from small MS4 and construction activities smaller than 5 acres obtain NPDES permits and stating a schedule to submit an application.
R.61-9.122.26(b)(2) - (4)	Move the existing definition of "General Permit application" to the section on General Permits, add a note to that effect, and renumber items (2) - (4) respectively from existing items (3) - (5).
R.61-9.122.26(b)(4)(i)	Revise the existing item to state that the 1990 census is to be used in determining which municipalities fall into categories of large MS4.
R.61-9.122.26(b)(4)(iii)	Revise references based on renumbering.
R.61-9.122.26(b)(4)(iii)(B)	Revise reference based on renumbering.
R.61-9.122.26(b)(4)(iv)	Revise reference based on renumbering.
R.61-9.122.26(b)(5) - (7)	Renumber items (5) - (7) respectively from existing items (6) - (8).
R.61-9.122.26(b)(7)(i)	Revise the existing item to state that the 1990 census is to be used in determining which municipalities fall into categories of medium MS4.
R.61-9.122.26(b)(7)(iii)	Revise references based on renumbering.
R.61-9.122.26(b)(7)(iii)(B)	Revise references based on renumbering.
R.61-9.122.26(b)(7)(iv)	Revise references based on renumbering.
R.61-9.122.26(b)(8)	Renumber item (8) from existing item (9).
R.61-9.122.26(b)(9) - (11)	Move the existing definition of "Notice of Intent" to the section on General Permits, add a note to that effect, and renumber items (9) - (11) respectively from existing items (11) - (13).

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R.61-9.122.26(b)(12)	Renumber item (12) from existing item (17).
R.61-9.122.26(b)(13)	Renumber item (13) from existing item (15).
R.61-9.122.26(b)(14)	Revise the introductory language to change a reference, thereby revising areas of coverage, and to delete the exemption of subcategory (14)(xi) from permitting with “no exposure”. This exemption is restated in a new sub-section, R.122.26(g), and includes all subcategories.
R.61-9.122.26(b)(14)(x)	The item is revised to include certain construction activities disturbing areas less than 5 acres.
R.61-9.122.26(b)(14)(xi)	The item is revised to be consistent with new “no-exposure” requirements.
R.61-9.122.26(b)(15)	Add a new Federal item defining “storm water discharge associated with small construction activity”.
R.61-9.122.26(b)(16)	Add a new Federal item defining “small municipal separate storm sewer system”.
R.61-9.122.26(b)(17)	Add a new Federal item defining “small MS4”.
R.61-9.122.26(b)(18)	Add a new Federal item defining “Municipal separate storm sewer system”.
R.61-9.122.26(b)(19)	Add a new Federal item defining “MS4”.
R.61-9.122.26(b)(20)	Renumber the existing definition to (20) from (18).
R.61-9.122.26(b)(21)	Renumber the existing definition to (21) from (16).
R.61-9.122.26(c)	Revise the introductory language to include “storm water discharges associated with small construction activity”.
R.61-9.122.26(c)(1)	Revise the language to add small construction activity and to delete the authorization for group applications.
R.61-9.122.26(c)(1)(i)(E)(4)	Revise references based on renumbering.
R.61-9.122.26(c)(1)(i)(F)	Revise references based on renumbering.
R.61-9.122.26(c)(1)(ii)	Revise the item to include small construction activity in the exemption from certain application requirements.
R.61-9.122.26(c)(2)	Remove all language from the subsection related to group applications and reserve the subsection.
R61-9.122.26(d)(2)(iv)(C)(2)	Revise references based on renumbering.
R61-9.122.26(d)(2)(viii)	Revise a reference based on renumbering.

R.61-9.122.26(e)(1)	Rename the item to refer to storm water discharges associated with industrial activity.
R.61-9.122.26(e)(1)(ii)	Revise the item to set a specific date for submittal of a storm water permit application from certain municipally owned facilities.
R.61-9.122.26(e)(5)	Revise the item to extend the period for submittal of an application.
R.61-9.122.26(e)(5)(i)	Revise the item to include a reference to small construction activities.
R.61-9.122.26(e)(8)	Add a new Federal item stating a schedule for submitting applications for small construction activity.
R.61-9.122.26(e)(9)	Add a new Federal item stating a schedule for submitting applications for small MS4.
R.61-9.122.26(f)(4)	Revise the item to include small MS4 and to revise references based on renumbering.
R.61-9.122.26(f)(5)	Revise the item to include a different time for response by the Department related to small MS4.
R.61-9.122.26(g)	Add a new Federal item expanding an exemption of industrial activities for “no exposure”.
R.61-9.122.27(a)	Make a clerical correction to the existing item.
R.61-9.122.28(a)(1)	Revise the item to allow more than one category or subcategory to be covered in a permit and to clarify that the area covered by a permit must correspond to particular boundaries.
R.61-9.122.28(a)(2)	Revise the item to allow more than one category or subcategory to be covered in a permit and to include sludge handling.
R.61-9.122.28(a)(2)(ii)	Revise the item to allow more than one category or subcategory of TWTDS to be covered in a permit.
R.61-9.122.28(a)(3)	Add a new Federal item related to water-quality-based general permits.
R.61-9.122.28(a)(4)	Add a new Federal item requiring controls for separately covered categories and allowing exclusion of certain potential permittees from coverage.
R.61-9.122.28(b)(1)	Add a reference to Federal procedures for issuance of general permits.
R.61-9.122.28(b)(2)(v)	Revise the existing language to refer to MS4.
R.61-9.122.28(b)(4)	Add a new item including only two definitions moved from the section on storm water, R.122.26(b).

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R.61-9.122.30	Add a new Federal section describing, in general, the new program for storm water permits for small MS4.
R.61-9.122.31	Add a new Federal section controlling storm water for Indian country.
R.61-9.122.32	Add a new Federal section describing the small municipalities which must be covered by storm water NPDES permits.
R.61-9.122.33	Add a new Federal section describing the application process for storm water permits for small MS4.
R.61-9.122.34	Add a new Federal section describing the types of requirements to be included in an NPDES permit for small MS4.
R.61-9.122.35	Add a new Federal section discussing sharing of responsibility for implementing control measures stated in NPDES permits for small MS4.
R.61-9.122.36	Add a new Federal section discussing enforcement possibilities for non-compliance with NPDES permits for small MS4.
R.61-9.122.44(a)(1)	Re-number to the new item number, (a)(1) from the existing subsection number (a).
R.61-9.122.44(a)(2)	Add a new Federal item providing “monitoring waivers for certain guideline-listed pollutants”.
R.61-9.122.44(c)	Revise the existing item relating to reopener clauses, deleting the introductory language, items (1) through (3), and the number only for item (4).
R.61-9.122.44(j)(2)(i)	Re-number to the new item number, (2)(i), from the existing subsection number, (2).
R.61-9.122.44(j)(2)(ii)	Add a new Federal item requiring a written submittal for a POTW with a pretreatment program to revise local limits.
R.61-9.122.44(k)	Revise the introductory language.
R.61-9.122.44(k)(2)	Add a new Federal item requiring best management practices plan (BMP) submittal for storm water discharges.
R.61-9.122.44(k)(3) and (4)	Re-number the existing items based on the above-mentioned addition.
R.61-9.122.44(q)	Revise the item so that application of the requirement is not restricted to U.S waters.
R.61-9.122.44(r)	Reserve a new subsection number.
R.61-9.122.44(s)	Add a new federal item related to storm water permits.

R.61-9.122.45(h)(1)	Revise a reference.
R.61-9.122.62(a)(8)(ii)	Revise a reference to make it more specific.
R.61-9.122.62(a)(14)	Insert a new Federal item related to small MS4 for the existing reserved item.
R.61-9.122.64(b)	Add Federal language to the existing item allowing expedited termination of permits.
R61-9.122 Appendices F, G, H, and I	Revise the wording of the Title of each appendix. Also, revise the reference for each appendix to include 12/8/99 FR revisions to those referenced Federal appendices.
R61-9.122, Appendix J	Add the new Federal appendix tabulating NPDES application requirements for POTW, based on requirements in R.61-9.122.21(j).
R61-9.124, Procedures for Decision Making	
R.61-9.124 Table of Contents	Remove Part E, Part F, and Appendix A from the Table of Contents.
R.61-9.124.1	Change a reference in the introductory language based on renumbering mentioned above.
R.61-9.124.2(b)	Reserve the item, removing the existing definition.
R.61-9.124.5(d)(1) and (2)	Delete the first sentence of existing subsection (d) and add new Federal items relating to notice of termination of a permit. This item is inserted prior to the existing introductory language of the item.
R.61-9.124.5(d)(3)	Renumber the second sentence of the existing introductory language of the item to (d)(3) from (d).
R.61-9.124.8(b)(9)	Add a new Federal item requiring that information on waivers of application requirements be included in fact sheets.
R.61-9.124.52(c)	Revise the introductory language to the existing section to include a reference to scheduling requirements of R.61-9.122.26(a)(9), delete a reference, and extend the period allowed for submitting an application.
124.56(b)(1)(ii)	NF. Change the wording.
124.56(b)(1)(iii) and (iv)	NF. For each item, delete the ending punctuation (period) and replace with a semicolon.
R.61-9.124.56(b)(1)(v)	Add a new Federal item requiring that a fact sheet explain the basis for meeting criteria for new sources.

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R.61-9.124.56(b)(1)(vi)	Add a new Federal item requiring that a fact sheet explain the basis for waivers from monitoring requirements.
R.61-9.124 (end)	Delete reserved existing Parts E and F and Appendix A.
R.61-9.125, Criteria and Standards for the National Pollutant Discharge Elimination System	
R.61-9.125.32(a)	Revise references to be more specific, specifically referring to application requirements.
R.61-9.125, Subpart K	Remove all language, consisting of existing sections 125.100 - 104, and reserve the Subpart related to BMP.
R61-9.403, General Pretreatment Regulations for Existing and New Sources of Pollution	
R.61-9.403.8	Revise the title of the section.
R.61-9.403.8(c)	Make a clerical correction to the subsection.
R.61-9.403.8(f)(6)	Revise the item to require that POTW with pretreatment programs maintain a list of industrial users, to eliminate the automatic approval of submittals if no reply is prepared by the Department, and to make additional clerical revisions.
R.61-9.403.11(b)(1)(i)(A)	Revise the item to make sending notices to certain government agencies unnecessary if they request that notices not be sent.
R.61-9.403.11(b)(1)(i)(B)	Revise the item to allow more flexibility in choosing the newspaper for public notice relating to pretreatment permits.
R.61-9.403.12(i)(4)	Add a new Federal item to require that the POTW include a general description of previously unreported changes in their annual report of pretreatment.
R.61-9.403.12(i)(5)	Renumber the existing item to (5) from (4) based on the above-mentioned addition.
R.61-9.403.18(b), (c), (d), and (e).	Remove existing subsections (b) and (c) and replace with the new Federal items, revising procedures for modification of pretreatment programs.
R.61-9.403 Just prior to Appendices.	Add recent FR citations to the statement of authority.
R.61-9.403, Appendix G, Table II, Chromium	Revise the chromium limit to clarify that it applies to total chromium, and add a new Federal limit related to land application.
R.61-9.403, Appendix G, Table II, Copper	Revise the copper limit.

R.61-9.403, Appendix G, Table II, Key	Remove the definition of “SD”, as it is no longer used.
R.61-9.403, Appendix G, Table II, (Note) 1	Revise the description of the regulated unit.
R.61-9.403, Appendix G, Table II, (Note) 2	Revise the description of the regulated unit.
R.61-9.503, Standards for the Use or Disposal of Sewage Sludge	
R.61-9.503.2(d)	Eliminate reservation of the subsection, adding a new Federal subsection, stating specific compliance deadlines for Federal regulations which were effective September 3, 1999.
R.61-9.503.9(e), (o), (q), and (bb)	Revise these definitions, which refer to renumbered definitions in R.61-9.122.2(b), for clarity.
R.61-9.503.10(d)	Revise the language of the item concerning application of the regulation to bulk material derived from sewage sludge.
R.61-9.503.10(e)	Revise the language of the item concerning application of the regulation to sewage sludge sold or given away in a bag or other container for application to the land.
R.61-9.503.10(f)	Revise the language of the item concerning application of the regulation to material derived from sewage sludge sold or given away in a bag or other container for application to the land.
R.61-9.503.10(g)	Revise the language of the item concerning application of the regulation to material derived from sewage sludge sold or given away in a bag or other container for application to the land.
R.61-9.503.16(a)(1)	Revise the language to correct references.
R.61-9.503.16, Table 1, Note	Following R.61-9.503.16(a)(1), revise the note to change, in some circumstances, the means of determining the amount of sludge related to monitoring frequency of sludge which is land-applied.
R.61-9.503.16(a)(2)	Revise a reference.
R.61-9.503.17(a)(1)(ii)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(2)(ii)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(3)(i)(B)	Revise the content of the required data-certification statement.

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R.61-9.503.17(a)(3)(ii)(A)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(4)(i)(B)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(4)(ii)(A)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(4)(ii)(E)	Add a new Federal item requiring submittal in the specified circumstances of the date of application of sludge.
R.61-9.503.17(a)(5)(i)(B)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(5)(ii)(C)	Revise the item to eliminate, in the specified circumstances, the requirement to submit the time of application of sludge.
R.61-9.503.17(a)(5)(ii)(F)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(5)(ii)(H)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(5)(ii)(J)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(5)(ii)(L)	Revise the content of the required data-certification statement.
R.61-9.503.17(a)(6)(iii)	Revise the content of the required data-certification statement.
R.61-9.503.17(b)(3)	Revise the item to eliminate, in the specified circumstances, the requirement to submit the time of application of sludge.
R.61-9.503.17(b)(6)	Revise the content of the required data-certification statement.
R.61-9.503.17(b)(7)	Revise the item related to the means of meeting pathogen requirements.
R.61-9.503.18(a)(2)	Revise the item related to reporting when loading of any site approaches the cumulative maximum.
R.61-9.503.21(c)	Revise references to Federal drinking water standards.
R.61-9.503.22(b)	Revise the subsection to include a reference to permits under section 404 of the Clean Water Act and to revise a long-passed compliance date.
R.61-9.503.26(a)(1)	Revise the terminology of the item related to monitoring frequency.
R.61-9.503.26, Table 1	Following R.61-9.503.26(a)(1), revise the Table to add monitoring requirements for operations smaller than 290 tons per year.
R.61-9.503.26(a)(2)	Revise the item, changing references.
R.61-9.503.27(a)(1)(ii)	Revise the content of the required data-certification statement.
R.61-9.503.27(a)(2)(ii)	Revise the content of the required data-certification statement.
R.61-9.503.27(b)(1)(i)	Revise the content of the required data-certification statement.

R.61-9.503.27(b)(2)(i)	Revise the content of the required data-certification statement.
R.61-9.503.31(g)	Revise the definition of pH to consider temperature.
R.61-9.503.32(b)(2)(i)	Revise the item related to the time of collection of samples.
R.61-9.503.32(b)(5)(v)	Revise terminology.
R.61-9.503.33(b)(10)(i)	Revise terminology and allow discretion by the Department in the specified circumstances
R.61-9.503.41(c)	Add a new Federal definition.
R.61-9.503.41(d) - (h)	Renumber the items respectively from existing items (c) - (g) based on the above-mentioned addition.
R.61-9.503.41(i)	Add a new Federal definition.
R.61-9.503.41(j)	Renumber the item from existing items (h) based on the above-mentioned additions.
R.61-9.503.41(k)	Add a new Federal definition.
R.61-9.503.41(l) - (r)	Renumber the items respectively from existing items (i) - (o) based on the above-mentioned addition.
R.61-9.503.43(c)(1)	Revise the item to express the limit as “average ...” and to eliminate the specific units of the limit.
R.61-9.503.43(c)(2)	Add new Federal introductory language related to the dispersion factor to the item.
R.61-9.503.43(c)(2)(i)	Revise terminology.
R.61-9.503.43(c)(2)(ii)	Revise terminology and delete the requirement that the dispersion model be specified by the Department.
R.61-9.503.43(c)(3)	Revise terminology, delete the requirement that the performance test be specified by the Department, and add a reference.
R.61-9.503.43(d)(1)	Revise the item to express the limit as “average ...” and to eliminate the specific units of the limit and to clarify terminology.
R.61-9.503.43, Table 1	Following R.61-9.503.43(d)(1), make a clerical revision to the title of the Table.
R.61-9.503.43(d)(3)	Eliminate the requirement that calculation be as specified by the Department.

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R.61-9.503.43, Table 2	Make a clerical revision to the title of the Table.
R.61-9.503.43(d)(4)	Add new Federal introductory language related to the dispersion factor to the item.
R.61-9.503.43(d)(4)(i)	Revise terminology.
R.61-9.503.43(d)(4)(ii)	Revise terminology and delete the requirement that the dispersion model be specified by the Department.
R.61-9.503.43(d)(5)	Revise terminology, delete the requirement that the performance test be specified by the Department, and add a reference.
R.61-9.503.43(e)	Add a new Federal item concerning air dispersion modeling and performance testing, moving the existing item (e) to (f).
R.61-9.503.43(f)	Move the existing item from (e) to (f).
R.61-9.503.45(a)(1), (b), (c), and (d)	Revise terminology and delete the requirement that the instrument be as specified by the Department.
R.61-9.503.45(e)	Delete the existing item and add a new Federal item specifically restricting the combustion temperature during operation.
R.61-9.503.45(f)	Delete the existing item and add a new Federal item relating to air pollution control devices for sewage sludge incinerators.
R.61-9.503.45(h)	Add a new Federal item related to instruments for sewage sludge incinerators.
R.61-9.503.46(a)(1)	Revise the item relate to the monitoring frequency of mercury and beryllium to delete the determination by the Department and to refer to the Federal requirement.
R.61-9.503.46(a)(3)	Revise the item to eliminate the minimum monitoring frequency.
R.61-9.503.46(c)	Revise the item related to the monitoring frequency of pollution control devices to refer to the Federal requirement.
R.61-9.503.47(f)	Revise the item related to records of combustion temperature.
R.61-9.503, Appendix B, B.6	Revise the item to include a specific radiation dose.
R.61-9.504, Standards for the Use or Disposal of Industrial Sludge	
R.61-9.504.9(d), (p), (r), and (bb)	Revise the references in the definitions based on revised numbering of R.61-9.122.2(b).

Instructions: Amend R.61-9 pursuant to each individual instruction provided with the text of the amendment below.

Text of Amendment:

Replace 61-9.122.1 Table of Contents to read:

61-9.122. The National Pollutant Discharge Elimination System

Part A - Definitions and General Program Requirements

Section

- 122.1 Purpose and scope.
- 122.2 Definitions.
- 122.3 Exclusions.
- 122.4 Prohibitions.
- 122.5 Effect of a permit.
- 122.6 Continuation of expiring permits.
- 122.7 Confidentiality of information.

Part B - Permit Application and Special NPDES Program Requirements

- 122.21 Application for a permit.
- 122.22 Signatories to permit applications and reports.
- 122.23 Concentrated animal feeding operations.
- 122.24 Concentrated aquatic animal production facilities.
- 122.25 Aquaculture projects.
- 122.26 Storm water discharges.
- 122.27 Silvicultural activities.
- 122.28 General permits.
- 122.29 New sources and new discharges.
- 122.30 What are the objectives of the storm water regulations for small MS4s?
- 122.31 Indian Tribes.
- 122.32 Is an operator of a small MS4 regulated under the NPDES storm water program?
- 122.33 How does an operator of a regulated, small MS4 apply for an NPDES permit, and when must he apply?
- 122.34 As an operator of a regulated, small MS4, what will my NPDES MS4 storm water permit require?
- 122.35 May an operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?
- 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in sections 122.33 through 122.35?

Part C - Permit Conditions

- 122.41 Conditions applicable to all permits.
- 122.42 Additional conditions applicable to specified categories of NPDES permits.
- 122.43 Establishing permit conditions.
- 122.44 Establishing limitations, standards and other permit conditions.
- 122.45 Calculating NPDES permit conditions.
- 122.46 Duration of permits.

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- 122.47 Schedules of compliance.
- 122.48 Requirements for recording and reporting of monitoring results.
- 122.49 [Reserved].
- 122.50 Disposal of pollutants into publicly-owned treatment works.

Part D - Transfer, Modification, Revocation and Reissuance, and Termination of Permits

- 122.61 Transfer of permits.
- 122.62 Modification or revocation and reissuance of permits.
- 122.63 Minor modifications of permits.
- 122.64 Termination of permits.

APPENDIX A - NPDES Primary Industry Categories

APPENDIX B - Criteria For Determining A Concentrated Animal Feeding Operation (section 122.23)

APPENDIX C - Criteria For Determining A Concentrated Aquatic Animal Production Facility (section 122.24)

APPENDIX D - NPDES Permit Application Testing Requirements (section 122.21) (Refer to 40 CFR Part 122, Appendix D)

APPENDIX E - Rainfall Zones Of The United States (Refer to 40 CFR Part 122, Appendix E)

APPENDIX F - Incorporated Places With Populations Greater Than 250,000 According To The 1990 Decennial Census By Bureau Of Census (Refer to 40 CFR Part 122, Appendix F)

APPENDIX G - Incorporated Places With Populations Greater Than 100,000 And Less Than 250,000 According To 1990 Decennial Census By Bureau Of Census (Refer to 40 CFR Part 122, Appendix G)

APPENDIX H - Counties With Unincorporated Urbanized Areas With A Population Of 250,000 Or More According To The 1990 Decennial Census By The Bureau Of Census (Refer to 40 CFR Part 122, Appendix H)

APPENDIX I - Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According To The 1990 Decennial Census By The Bureau Of Census (Refer to 40 CFR Part 122, Appendix I)

APPENDIX J - NPDES Permit Testing Requirements For Publicly Owned Treatment Works [section 122.21(j)]

The authority for R61-9.122 is added as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq. and the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10 et. seq.

Item 122.1(a) is revised to read as follows:

(1) The regulatory provisions contained in R.61-9.122 and 124 implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C. 1251 et seq.) and the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10, et seq.

(2) These provisions cover basic Department permitting requirements (122) and procedures for Department processing of permit applications and appeals (124).

(3) These provisions also establish the requirements for public participation in State permit issuance and enforcement and related variance proceedings.

(4) The NPDES permit program has separate, additional provisions that are used by the Department to determine what requirements must be placed in permits, if issued. These provisions are located at S.C. R61-9.125, 129, 133, and 503, 40 CFR 136, and 40 CFR subchapter N (parts 400 through 471).

Items 122.1(b)(2) , (3), and (4) are renumbered and revised to read as follows:

(2) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit, unless all requirements implementing section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under a Land Application or State permit issued by the Department under R.61-9.505, as adequate to assure compliance with section 405 of the CWA.

(3) The Department may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in section 122.2, where it finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under section 122.21 within 180 days of being notified by the Department that a permit is required. The Department's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet for the permit.

(4) The following are point sources requiring NPDES permits for discharges:

- (i) Concentrated animal feeding operations as defined in section 122.23;
- (ii) Concentrated aquatic animal production facilities as defined in section 122.24;
- (iii) Discharges into aquaculture projects as set forth in section 122.25;
- (iv) Discharges of storm water as set forth in sections 122.26 and 122.30 through 36; and,
- (v) Silvicultural point sources as defined in section 122.27.

Replace 61-9.122.2(b), Definitions, in entirety to read:

(b) Definitions:

"Administrator" means the Administrator of the Environmental Protection Agency or any employee of the Agency to whom the Administrator may by order delegate the authority to carry out his functions under section 307(a) of the CWA, or any person who shall by operation of law be authorized to carry out such functions.

Note: "Animal feeding operation" is defined at section 122.23.

"Applicable standards and limitations" means all State, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under section 301, 302, 303, 304, 306, 307, 308, 403 or 405 of CWA.

"Applicant" means a person applying to the Department for a State or NPDES permit to discharge wastes into the waters of the State or to operate a treatment works.

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“Application” means the uniform NPDES application form, including subsequent additions, revisions, or modifications thereof promulgated by the Administrator of EPA, and adopted for use by the Board or a State permit application form.

Note: “Aquaculture project” is defined at section 122.25.

“Average monthly discharge limitation” means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

“Average weekly discharge limitation” means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

“Best management practices” (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“BMP” means best management practices.

“Board” means the Board of Health and Environmental Control for the State of South Carolina and shall be inclusive of any agent designated by the Board to perform any function.

Note: “Bypass” is defined at section 122.41(m).

“CFR” means the Code of Federal Regulations, as amended.

“Class I sludge management facility” means any POTW identified under R.61-9.403.8(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator in conjunction with the Department because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

“Code” means the South Carolina Code of 1976, as amended.

“Commissioner” means the Commissioner of the S.C. Department of Health and Environmental Control, or his designated representative.

Note: “Concentrated animal feeding operation” is defined at section 122.23.

Note: “Concentrated aquatic animal feeding operation” is defined at section 122.24.

“Contiguous zone” means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

“Continuous discharge” means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

“CWA” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et seq. Specific references to sections within the CWA will be according to Pub. L. 92-500 notation.

“CWA and regulations” means the Clean Water Act (CWA) and applicable regulations promulgated thereunder and includes State NPDES program requirements.

“Daily discharge” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

“Department” means the S.C. Department of Health and Environmental Control and shall also be inclusive of those persons within the Department authorized by the Board to administer the NPDES program or take any action in behalf of the Board.

“Direct discharge” means the discharge of a pollutant.

“Discharge” means any discharge or discharge of any sewage, industrial wastes or other wastes into any of the waters of the State, whether treated or not.

“Discharge of a pollutant”

(1) means:

(i) Any addition of any pollutant or combination of pollutants to waters of the State from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

(2) includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

“Discharge Monitoring Report” (DMR) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees, and modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

“Discharger” means any person who discharges any treated or untreated sewage, industrial wastes, or other wastes into any of the waters of the State.

“DMR” means Discharge Monitoring Report.

“Draft permit” means a document prepared by the staff of the Department, in accordance with R.61-9.124.6, prior to public notice of an application for a permit by a discharger. This document indicates the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit to discharge. It contains proposed effluent standards and limitations, proposed compliance schedules and other proposed conditions or restrictions deemed necessary by the Department for a discharge. The draft permit constitutes an order of the Department and shall constitute a final determination of the Department thirty (30) days after issuance unless timely appealed in accordance with the provisions of the Pollution Control Act (PCA) and this Regulation. A notice of intent

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to terminate a permit, and a notice of intent to deny a permit, as discussed in R.61-9.124.5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in R.61-9.124.5, is not a draft permit. A "proposed permit" is not a draft permit.

"Effluent limitation" means any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means: A regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

"Effluent standards and limitations" means restrictions or prohibitions of chemical, physical, biological, and other constituents which are discharged from point sources into State waters, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, pretreatment standards and schedules of compliance.

"Environmental Protection Agency" (EPA) means the United States Environmental Protection Agency.

"EPA" means the United States Environmental Protection Agency.

"Facility or activity" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Fact sheet" means a description of a discharge available to the public prepared by the Department staff pursuant to the guidelines, which includes, but is not limited to, information on the location of the discharge, rate of frequency of the discharge, components of the discharge, proposed requirements of the Department regarding the discharge, the location and identification of uses of the receiving waters, water quality standards and procedures for formulation of final requirements on the discharge by the Department.

"Federal Act" means the Federal Water Pollution Control Act (CWA), as amended.

"General permit" means an NPDES permit issued under section 122.28 authorizing a category of discharges or activities under the PCA and CWA within a geographical area.

"Guidelines" means the Federal guidelines promulgated by EPA, entitled, "Part 124 - State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System," as published in 40 CFR 124, Volume 37, Number 247.

"Hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to section 311 of CWA.

"Indian country" means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

“Indirect discharger” means a non-domestic discharge introducing pollutants to a publicly owned treatment works.

“Industry” means a private person, corporation, firm, plant or establishment which discharges sewage, industrial wastes or other wastes into the waters of the State.

“Interstate agency” means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

“Mailing list” means a list of persons requesting notification and information on public hearings, permits and other NPDES forms.

“Major Facility” means any NPDES facility or activity classified as such by the Regional Administrator in conjunction with the Department.

“Management agency” means an area-wide waste treatment management agency designated by the governor pursuant to Section 208(a) of the Federal Act.

“Maximum daily discharge limitation” means the highest allowable daily discharge.

“Minor discharge” means a discharge of wastewater which has a total volume of less than 50,000 gallons on every day of the year, does not closely affect the waters of another state and is not identified by the Department, the Regional Administrator or by the Administrator of EPA in regulations issued by him pursuant to Section 307(a) of the Federal Act, as a discharge which is not a minor discharge, except that in the case of a discharge of less than 50,000 gallons on any day of the year which represents 1 or 2 or more discharges from a single person which in total exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a minor discharge.

Note: “Municipal separate storm sewer system” is defined at sections 122.26 (b).

“Municipality” means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

“National Pollutant Discharge Elimination System” means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA.

“New discharger”

(1) means any building, structure, facility, or installation:

- (i) From which there is or may be a discharge of pollutants.
- (ii) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
- (iii) Which is not a new source, and
- (iv) Which has never received a finally effective NPDES permit for discharges at that site.

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(2) This definition includes an indirect discharger which commences discharging into waters of the State after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a site under Department's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Department in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Department shall consider the factors specified in section 122(a)(1) through (10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a new discharger only for the duration of its discharge in an area of biological concern.

"New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(2) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

"NPDES" means National Pollutant Discharge Elimination System established by the CWA.

"NPDES form" means any issued permit or any uniform national form used by the Department developed for use in the NPDES, including a NPDES application, a Refuse Act permit application and a reporting form.

"NPDES permit" means a permit issued by the Department to a discharger pursuant to regulations adopted by the Board for all point source discharges into surface waters, and shall constitute a final determination of the Board.

"Non-compliance list" means a list of dischargers, prepared by the Department pursuant to this regulation and the guidelines for transmittal to the Regional Administrator, who fail or refuse to comply with a compliance schedule in a NPDES permit issued pursuant to the State law.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the NPDES program.

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this regulation, 40 CFR Parts 123, and R.61-9.124. Permit includes an NPDES general permit (section 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

“Point source discharge” means a discharge which is released to the waters of the State by a discernible, confined and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which waste is or may be discharged.

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“Pollutant”

(1) means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(2) does not mean:

(i) Sewage from vessels; or

(ii) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

“Pollution Control Act” (PCA) means the South Carolina Pollution Control Act (PCA), S.C. Code Ann. section 48-1-10 et seq. (1976).

“POTW” means publicly owned treatment works.

“Primary industry category” means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al., v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of this regulation.

“Privately owned treatment works” means any device or system which both is used to treat wastes from any facility whose operator is not the operator of the treatment works and is not a POTW.

“Process wastewater” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

“Proposed permit” means a State NPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A “proposed permit” is not a draft permit.

“Publicly owned treatment works” or POTW means a treatment works as defined by section 212 of the Clean Water Act, which is owned by a state or municipality (as defined by section 502[4] of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality, as defined in section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges to and the discharge from such a treatment works.

“Recommencing discharger” means a source which recommences discharge after terminating operations.

“Refuse Act permit application” means an application for a permit issued under authority of Section 13 of the United States Rivers and Harbors Act of March 3, 1899.

“Regional Administrator” means the Regional Administrator of Region IV of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

“Reporting form” means the uniform NPDES reporting form, including subsequent additions, revisions or modifications thereof, adopted by the Department for use in administering this regulation, or a State form prescribed

by the Department for use in administering this regulation, for reporting data and information to the Department by a discharger on monitoring and other conditions of permits.

“Schedule of compliance” means a schedule of remedial measures included in a “permit”, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

“Secondary industry category” means any industry category which is not a primary industry category.

“Secretary” means the Secretary of the Army, acting through the Chief of Engineers.

“Septage” means the liquid and solid material pumped from septic tank, cesspool or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

“Sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA.

“Sewage Sludge” means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings or ash generated during the incineration of sewage sludge.

“Sewage sludge use or disposal practice” means the collection, storage, treatment, transportation, processing, monitoring, use or disposal of sewage sludge.

Note: “Silvicultural point source” is defined at section 122.27.

“Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

“Sludge-only facility” means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA and is required to obtain a permit under section 122.1(b)(2).

“Standards for sewage sludge use or disposal” means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

“State” means the State of South Carolina.

“State/EPA Agreement” means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

“State Law” means the S.C. Pollution Control Act (PCA), specifically 48-1-10 through 48-1-350 of the South Carolina Code of 1976, and any subsequent amendments thereto.

“State permit” See R-61-9.505.2 for definition.

Note: “Storm water” is defined at section 122.26(b)(13).

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Note: “Storm water discharge associated with industrial activity” is defined at section 122.26(b)(14).

“Total dissolved solids” (TDS) means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

“Toxic pollutant” means any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA.

“Trade secret” means the whole or any portion or phase of any manufacturing proprietary process or method, not patented, which is secret, useful in compounding an article of trade having a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto to limited purpose. It shall not be construed for purpose of this regulation to include any information relative to the quantity and character of waste products or their constituents discharged into waters of the State.

“Treatment works” means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

“Treatment works treating domestic sewage” (TWTDS) means a POTW or any other sewage sludge or waste water treatment devices or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR Part 503 as a treatment works treating domestic sewage, where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling use or disposal practices or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR Part 503.

“TWTDS” means treatment works treating domestic sewage.

Note: “Upset” is defined at section 122.41(n).

“Variance” means any mechanism or provision under section 301 or 316 of CWA, PCA, or R.61-9.125, or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on section 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

“Vessel” means any contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this State, passenger or other cargo carrying vessels, privately owned recreational watercraft or any other floating craft.

“Waste” shall be synonymous with sewage, industrial waste, and other wastes.

“Waters of the State” means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.

“Waters of the United States” or... or “waters of the U.S.” means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate “wetlands;”
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (5) Tributaries of waters identified in paragraphs (A) through (D) of this definition;
- (6) The territorial sea; and
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (A) through (F) of this definition.
- (8) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

“Whole effluent toxicity” means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Replace 61-9.122.4(i)(2) to read:

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Department may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Department determines that the Department already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under section 124.56(b)(1).

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Replace 61-9.122.21(a)(1) through (a)(3); delete 122.21(a)(4); 122.21(b) remains the same:

(1) Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" whose sewage sludge use or disposal practice is regulated by R.61-9.503 and who does not have an effective permit, except persons covered by general permits under section 122.28, excluded under section 122.3, or a user of a privately owned treatment works, unless the Department requires otherwise under section 122.44(m), must submit a complete application to the Department in accordance with this section and R.61-9.124.

(2) Applicants for State-issued permits must use State forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

(3) A person discharging or proposing to discharge wastes into the waters of the State shall promptly make application for and obtain a valid NPDES Permit and, if required, a valid State Construction Permit.

Item R.61-9.122.21(c)(1) is revised by amending references, as follows:

(1) Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Department. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under section 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180-day requirements to avoid delay. See also paragraph (k) of this section and section 122.26(c)(1)(i)(G) and (c)(1)(ii).

Replace 61-9.122.21(c)(2) through 122.21(c)(2)(v); 122.21(c)(3) remains the same:

(2) Permits under section 405(f) of CWA. All "treatment works treating domestic sewage" (TWTDS) whose sewage sludge use or disposal practices are regulated by part 503 of this chapter must submit permit applications according to the applicable schedule in paragraphs (c)(2)(i) or (ii) of this section.

(i) A TWTDS with a currently effective NPDES permit must submit a permit application at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(ii) Any other TWTDS not addressed under paragraphs (c)(2)(i) of this section must submit the information listed in paragraphs (c)(2)(ii)(A) through (E) of this section to the Department within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form provided by the Department. The Department will determine when such TWTDS must submit a full permit application.

(A) The TWTDS's name, mailing address, location, and status as federal, State, private, public or other entity;

(B) The applicant's name, address, telephone number, and ownership status;

(C) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of paragraph (q)(8)(iv) of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(D) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(E) The most recent data the TWTDS may have on the quality of the sewage sludge.

(iii) Notwithstanding paragraphs (c)(2)(i) or (ii) of this section, the Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(iv) Any TWTDS that commences operations after promulgation of an applicable ``standard for sewage sludge use or disposal'' must submit an application to the Department at least 180 days prior to the date proposed for commencing operations.

Revise item R.61-9.122.21(d)(3) by deleting all language and reserving the item, as follows:

(3) [Reserved]

Revise item 122.21(e) by inserting a new item (2) and by renumbering existing items (2) and (3) as (3) and (4), as follows:

(2) A permit application shall not be considered complete if a permitting authority has waived application requirements under paragraphs (j) or (q) of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

(3) The Department, at its discretion, or upon request of the Regional Administrator, may request of an applicant any additional information deemed necessary to complete or correct deficiencies in a Refuse Act permit application, before processing the application or issuing or denying the issuance of a permit.

(4) The Department may take enforcement action as prescribed by the State law or this regulation against any person who fails to file a complete application, if deficiencies are not corrected or complete information is not supplied within sixty (60) days to the Department following its request.

Revise sub-section 122.21(f) by removing reserved item (1) and the numbering of item (2) , amending the language remaining as introductory language, and renumbering sub-items, as follows:

(f) Information requirements. All applicants for NPDES permits, other than POTW and other TWTDS, must provide the following information to the Department, using the application form provided by the Department. Additional information required of applicants is set forth in paragraphs (g) through (k) of this section.

(1) The activities conducted by the applicant which require it to obtain an NPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

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(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

- (i) Hazardous Waste Management program under RCRA.
- (ii) UIC program under SDWA.
- (iii) NPDES program under CWA.
- (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
- (v) Nonattainment program under the Clean Air Act.
- (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
- (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
- (viii) Dredge or fill permits under section 404 of CWA.
- (ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(8) A brief description of the nature of the business, activity, or type project.

Revise item 122.21(g)(7) by dividing the introductory language into sub-items, by amending the sub-items, and by renumbering and amending the existing sub-items, as follows:

(7) Effluent characteristics.

(i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in section 122.26). When “quantitative data” for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7)(vi) and (vii) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition for discharges other than storm water discharges, the Department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

(ii) Storm water discharges. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under section 122.26(d) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Department). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in section 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in section 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to “know or have reason to believe” that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(iii) Reporting requirements. Every applicant must report quantitative data for every outfall for the following pollutants:

- (A) Biochemical oxygen demand, 5-day (BOD₅)
- (B) Chemical oxygen demand
- (C) Total organic carbon
- (D) Total suspended solids
- (E) Ammonia (as N)
- (F) Temperature (both winter and summer)
- (G) pH

(iv) The Department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(iii) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(v) Each applicant with processes in one or more primary industry category (see appendix A to this regulation) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D for the applicant’s industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of this section. Table II of Appendix D lists the organic toxic pollutants in each fraction. The fractions result from

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the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2, 3, and 4 of 40CFR122.21.]

(B) The pollutants listed in Table III of Appendix D (the toxic metals, cyanide, and total phenols).

(vi) (A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of appendix D of this part (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of appendix D of this part (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(v) of this section is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

(vii) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(viii) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

Replace 61-9.122.21(g)(8) introductory paragraph; subitems 122.21(g)(8)(i) and (ii) remain the same:

122.21(g)(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraph (g)(7) (v)(A) or (g)(7)(vi)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D (the organic toxic pollutants):

Revise the introductory language of sub-section 122.21(j) as follows:

(j) Application requirements for new and existing POTWs. Unless otherwise indicated, all POTW and other dischargers designated by the Department must provide, at a minimum, the information in this paragraph to the Department, using Form 2A or another application form provided by the Department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Department may waive any requirement of this paragraph if he or she has access to substantially identical information. The Department may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the State's justification for the waiver. A Regional Administrator's disapproval of a State's proposed waiver does not constitute final Agency action, but does provide notice to the State and permit applicant(s) that EPA may object to any State-issued permit issued in the absence of the required information.

Revise sub-section 122.21(j) by deleting existing items (1) - (4) and inserting new items (1) - (10), as follows:

- (1) Basic application information. All applicants must provide the following information:
- (i) Facility information. Name, mailing address, and location of the facility for which the application is submitted;
 - (ii) Applicant information. Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;
 - (iii) Existing environmental permits. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (A) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (B) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (C) NPDES program under Clean Water Act (CWA);
 - (D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (E) Nonattainment program under the Clean Air Act;
 - (F) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act;
 - (H) Dredge or fill permits under section 404 of the CWA; and
 - (I) Other relevant environmental permits, including State permits.
 - (iv) Population. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

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(v) Indian country. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

(vi) Flow rate. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous 3 years;

(vii) Collection system. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

(viii) Outfalls and other discharge or disposal methods. The following information for outfalls to waters of the State and/or of the United States and other discharge or disposal methods:

(A) For effluent discharges to waters of the State and/or of the United States, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(B) For wastewater discharged to surface impoundments:

(1) The location of each surface impoundment;

(2) The average daily volume discharged to each surface impoundment; and

(3) Whether the discharge is continuous or intermittent;

(C) For wastewater applied to the land:

(1) The location of each land application site;

(2) The size of each land application site, in acres;

(3) The average daily volume applied to each land application site, in gallons per day; and

(4) Whether land application is continuous or intermittent;

(D) For effluent sent to another facility for treatment prior to discharge:

(1) The means by which the effluent is transported;

(2) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, and NPDES permit number (if any) of the receiving facility; and

(4) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) For wastewater disposed of in a manner not included in paragraphs (j)(1)(viii)(A) through (D) of this section (e.g., underground percolation, underground injection):

(1) A description of the disposal method, including the location and size of each disposal site, if applicable;

- (2) The annual average daily volume disposed of by this method, in gallons per day; and
- (3) Whether disposal through this method is continuous or intermittent;

(2) Additional Information. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

(i) Inflow and infiltration. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

(ii) Topographic map. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) Treatment plant area and unit processes;

(B) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(C) Each well where fluids from the treatment plant are injected underground;

(D) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(E) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(F) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(iii) Process flow diagram or schematic.

(A) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) A narrative description of the diagram; and

(iv) Scheduled improvements, schedules of implementation. The following information regarding scheduled improvements:

(A) The outfall number of each outfall affected;

(B) A narrative description of each required improvement;

(C) Scheduled or actual dates of completion for the following:

(1) Commencement of construction;

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- (2) Completion of construction;
- (3) Commencement of discharge; and
- (4) Attainment of operational level;

(D) A description of permits and clearances concerning other Federal and/or State requirements;

(3) Information on effluent discharges. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) Description of outfall. The following information about each outfall:

- (A) Outfall number;
- (B) State, county, and city or town in which outfall is located;
- (C) Latitude and longitude, to the nearest second;
- (D) Distance from shore and depth below surface;
- (E) Average daily flow rate, in million gallons per day;
- (F) The following information for each outfall with a seasonal or periodic discharge:
 - (1) Number of times per year the discharge occurs;
 - (2) Duration of each discharge;
 - (3) Flow of each discharge; and
 - (4) Months in which discharge occurs; and
- (G) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) Description of receiving waters. The following information (if known) for each outfall through which effluent is discharged to waters of the state and or of the United States:

- (A) Name of receiving water;
- (B) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
- (C) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
- (D) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);

(iii) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of state and/or the United States:

(A) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

- (1) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);
- (2) Design total suspended solids (TSS) removal (percent); and, where applicable,
- (3) Design phosphorus (P) removal (percent);
- (4) Design nitrogen (N) removal (percent); and
- (5) Any other removals that an advanced treatment system is designed to achieve.

(B) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

(4) Effluent monitoring for specific parameters.

(i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Department may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone;

(ii) All applicants must sample and analyze for the pollutants listed in Appendix J, Table 1A of this part;

(iii) All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the pollutants listed in Appendix J, Table 1 of R.61-9.122. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table 1;

(iv) The following applicants must sample and analyze for the pollutants listed in Appendix J, Table 2 of R.61-9.122, and for any other pollutants for which the State or EPA have established water quality standards applicable to the receiving waters:

(A) All POTW with a design flow rate equal to or greater than one million gallons per day;

(B) All POTW with approved pretreatment programs or POTW required to develop a pretreatment program;

(C) Other POTW, as required by the Department;

(v) The Department should require sampling for additional pollutants, as appropriate, on a case-by-case basis.

(vi) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the

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discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Department should require additional samples, as appropriate, on a case-by-case basis.

(vii) All existing data for pollutants specified in paragraphs (j)(4)(ii) through (v) of this section that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 unless an alternative is specified in the existing NPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

(ix) The effluent monitoring data provided must include at least the following information for each parameter:

(A) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(C) The analytical method used; and

(D) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

(x) Unless otherwise required by the Department, metals must be reported as total recoverable.

(5) Effluent monitoring for whole effluent toxicity.

(i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(ii) As provided in paragraphs (j)(5)(iii)-(ix) of this section, the following applicants must submit to the Department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) All POTW with design flow rates greater than or equal to one million gallons per day;

(B) All POTW with approved pretreatment programs or POTW required to develop a pretreatment program;

(C) Other POTW, as required by the Department, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(2) The ratio of effluent flow to receiving stream flow;

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water or a water designated as an outstanding natural resource water; or

(5) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Department determines could cause or contribute to adverse water quality impacts.

(iii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Department may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The Department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(iv) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide:

(A) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(B) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the permitting authority.

(v) Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. EPA recommends that applicants conduct acute or chronic testing based on the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(vi) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vii) Applicants must provide the results using the form provided by the Department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (j)(5)(ii) of this section for which such information has not been reported previously to the Department.

(viii) Whole effluent toxicity testing conducted pursuant to paragraph (j)(5)(ii) of this section must be conducted using methods approved under 40 CFR part 136.

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(ix) For whole effluent toxicity data submitted to the Department within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(x) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

(6) Industrial discharges. Applicants must submit the following information about industrial discharges to the POTW:

(i) Number of significant industrial users (SIU) and categorical industrial users (CIU) discharging to the POTW; and

(ii) POTW with one or more SIU shall provide the following information for each SIU, as defined at 40 CFR 403.3(n), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's discharge;

(C) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

(iii) The information required in paragraphs (j)(6)(i) and (ii) of this section may be waived by the Department for POTW with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in paragraphs (j)(6)(i) and (ii) of this section.

(A) An annual report submitted within one year of the application; or

(B) A pretreatment program;

(7) Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTW receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(i) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

(A) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe) and

(B) The hazardous waste number and amount received annually of each hazardous waste;

(ii) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(A) The identity and description of the site(s) or facility(ies) at which the wastewater originates;

(B) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR part 261, if known; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

(iii) Applicants are exempt from the requirements of paragraph (j)(7)(ii) of this section if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

(8) Combined sewer overflows. Each applicant with combined sewer systems must provide the following information:

(i) Combined sewer system information. The following information regarding the combined sewer system:

(A) System map. A map indicating the location of the following:

(1) All CSO discharge points;

(2) Sensitive use areas potentially affected by CSO (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(3) Waters supporting threatened and endangered species potentially affected by CSO; and

(B) System diagram. A diagram of the combined sewer collection system that includes the following information:

(1) The location of major sewer trunk lines, both combined and separate sanitary;

(2) The locations of points where separate sanitary sewers feed into the combined sewer system;

(3) In-line and off-line storage structures;

(4) The locations of flow-regulating devices; and

(5) The locations of pump stations.

(ii) Information on CSO outfalls. The following information for each CSO discharge point covered by the permit application:

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(A) Description of outfall. The following information on each outfall:

- (1) Outfall number;
- (2) State, county, and city or town in which outfall is located;
- (3) Latitude and longitude, to the nearest second;
- (4) Distance from shore and depth below surface;
- (5) Whether the applicant monitored any of the following in the past year for this CSO:
 - (i) Rainfall;
 - (ii) CSO flow volume;
 - (iii) CSO pollutant concentrations;
 - (iv) Receiving water quality;
 - (v) CSO frequency; and
- (6) The number of storm events monitored in the past year;

(B) CSO events. The following information about CSO overflows from each outfall:

- (1) The number of events in the past year;
- (2) The average duration per event, if available;
- (3) The average volume per CSO event, if available; and
- (4) The minimum rainfall that caused a CSO event, if available, in the last year.

(C) Description of receiving waters. The following information about receiving waters:

- (1) Name of receiving water;
- (2) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code (if known); and
- (3) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code (if known); and

(D) CSO operations. A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

(9) Contractors. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(10) Signature. All applications must be signed by a certifying official in compliance with section 122.22.

Add new sub-section 122.21(q), as follows:

(q) Sewage sludge management. All TWTDS subject to paragraph (c)(2)(i) of this section must provide the information in this paragraph to the Department, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Department may waive any requirement of this paragraph if he or she has access to substantially identical information. The Department may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the State's justification for the waiver. A Regional Administrator's disapproval of a State's proposed waiver does not constitute final Agency action, but does provide notice to the State and permit applicant(s) that EPA may object to any State-issued permit issued in the absence of the required information.

(1) Facility information. All applicants must submit the following information:

- (i) The name, mailing address, and location of the TWTDS for which the application is submitted;
- (ii) Whether the facility is a Class I Sludge Management Facility;
- (iii) The design flow rate (in million gallons per day);
- (iv) The total population served; and
- (v) The status of the TWTDS as Federal, State, private, public, or other entity.

(2) Applicant information. All applicants must submit the following information:

- (i) The name, mailing address, and telephone number of the applicant; and
- (ii) Indication whether the applicant is the owner, operator, or both.

(3) Permit information. All applicants must submit the facility's NPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

- (i) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- (ii) UIC program under the Safe Drinking Water Act (SDWA);
- (iii) NPDES program under the Clean Water Act (CWA);
- (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- (v) Nonattainment program under the Clean Air Act;
- (vi) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

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(vii) Dredge or fill permits under section 404 of CWA;

(viii) Other relevant environmental permits, including State or local permits.

(4) Indian country. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

(5) Topographic map. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

(i) All sewage sludge management facilities, including on-site treatment, storage, and disposal sites and

(ii) Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

(6) Sewage sludge handling. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction.

(7) Sewage sludge quality. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in R.61-9.503 for the applicant's use or disposal practices on the date of permit application.

(i) The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

(ii) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

(iii) Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 unless an alternative has been specified in an existing sewage sludge permit.

(iv) The monitoring data provided must include at least the following information for each parameter:

(A) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(B) The analytical method used; and

(C) The method detection level.

(8) Preparation of sewage sludge. If the applicant is a "person who prepares" sewage sludge, as defined at R.61-9.503.9(r), the applicant must provide the following information:

(i) If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

(ii) If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(A) The name, mailing address, and location of the other facility;

(B) The total dry metric tons per 365-day period received from the other facility; and

(C) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

(iii) If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(A) Whether the Class A pathogen reduction requirements in R.61-9.503.32(a) or the Class B pathogen reduction requirements in R.61-9.503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(B) Whether any of the vector attraction reduction options of R.61-9.503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(C) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

(iv) If sewage sludge from the applicant's facility meets the ceiling concentrations in R.61-9.503.13(b)(1), the pollutant concentrations in section 503.13(b)(3), the Class A pathogen requirements in section 503.32(a), and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land.

(v) If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information:

(A) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land and

(B) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at R.61-9.503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

(A) The name and mailing address of the receiving facility;

(B) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

(C) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(D) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under R.61-9.503.12(g); and

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(E) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

(9) Land application of bulk sewage sludge. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to paragraphs (q)(8)(iv), (v), or (vi) of this section, the applicant must provide the following information:

(i) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(ii) If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

(iii) The following information for each land application site that has been identified at the time of permit application:

(A) The name (if any), and location for the land application site;

(B) The site's latitude and longitude to the nearest second, and method of determination;

(C) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(D) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(E) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(F) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under R.61-9.503.11;

(G) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(H) Whether either of the vector attraction reduction options of R.61-9. 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(I) Other information that describes how the site will be managed, as specified by the permitting authority.

(iv) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in R.61-9.503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to section 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to section 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(B) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in section 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in paragraph (q)(iv)(A), bulk sewage sludge subject to cumulative pollutant loading rates in section 503.13(b)(2) has been applied to the site since July 20, 1993;

(v) If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(A) Describes the geographical area covered by the plan;

(B) Identifies the site selection criteria;

(C) Describes how the site(s) will be managed;

(D) Provides for advance notice to the Department of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and

(E) Provides for advance public notice of land application sites in the manner prescribed by State and local law. When State or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application.

(10) Surface disposal. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

(ii) The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(A) The site name or number, contact person, mailing address, and telephone number for the surface disposal site and

(B) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site;

(iii) The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(A) The name or number and the location of the active sewage sludge unit;

(B) The unit's latitude and longitude to the nearest second, and method of determination;

(C) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(D) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(E) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

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(F) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(G) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(H) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(I) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(J) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(K) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(1) The name, contact person, and mailing address of the facility and

(2) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(L) Whether any of the vector attraction reduction options of R.61-9.503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(M) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit:

(1) A description of any ground water monitoring occurring at the active sewage sludge unit;

(2) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(3) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;

(4) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(N) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

(11) Incineration. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

(ii) The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(A) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator and

(B) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

(iii) The following information for each sewage sludge incinerator that the applicant owns or operates:

(A) The name and/or number and the location of the sewage sludge incinerator;

(B) The incinerator's latitude and longitude to the nearest second, and method of determination;

(C) The total dry metric tons per 365-day period fired in the sewage sludge incinerator;

(D) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR part 61 will be achieved;

(E) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR part 61 will be achieved;

(F) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

(G) The control efficiency for parameters regulated in R.61-9.503.43, as well as performance test results and supporting documentation;

(H) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(I) Whether the applicant monitors total hydrocarbons (THC) or carbon monoxide (CO) in the exit gas for the sewage sludge incinerator;

(J) The type of sewage sludge incinerator;

(K) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(L) The following information on the sewage sludge feed rate used during the performance test:

(1) Sewage sludge feed rate in dry metric tons per day;

(2) Identification of whether the feed rate submitted is average use or maximum design; and

(3) A description of how the feed rate was calculated;

(M) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

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(N) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(O) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(1) Total hydrocarbons or Carbon Monoxide;

(2) Percent oxygen;

(3) Percent moisture; and

(4) Combustion temperature; and

(P) A list of all air pollution control equipment used with this sewage sludge incinerator.

(12) Disposal in a municipal solid waste landfill. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

(i) The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

(ii) The total dry metric tons per 365-day period sent from this facility to the MSWLF;

(iii) A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

(iv) Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR part 258.

(13) Contractors. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

(14) Other information. At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under R.61-9.503, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements.

(15) Signature. All applications must be signed by a certifying official in compliance with section 122.22.

Replace item 122.22(a)(1)(ii) to read as follows:

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Add new item 122.26(a)(9) to read as follows:

(9) (i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to section 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

(C) Either the Department or the EPA Regional Administrator determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(D) Either the Department or the EPA Regional Administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), or (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with sections 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), or (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraph (a)(9)(i)(C) or (a)(9)(i)(D) of this section shall apply to the Department for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Department (see section 124.52[c] of this chapter).

Delete 61-9.122.26(b)(2) and replace with Note only to read:

Note: "General permit application" is defined at 122.28(b)(4).

Renumber existing 61-9.122.26.(b)(3), (4) and (5) to (b)(2), (3) and (4).**Replace existing 61-9.122.26(b)(5)(i), (iii), (iii)(B) [now renumbered to (4)(i), (iii) and (iii)(B)]; subitems (5)(ii) and (iii)(A)[now renumbered to (4)(ii) and (iii)(A)] remain the same:**

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. In making this determination the Department may consider the following factors:

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

Renumber existing 61-9.122.26(b)(6), (7) and (8) to (5), (6) and (7).

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Replace existing 61-9.122.26(b)(8)(i),(iii) and (iv) [now renumbered to (7) shown above]; subitems (ii) and (iii)(A) [now renumbered to (7)(ii) and (iii)(A)] remain the same:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G); or

(iii) Owned or operated by a municipality other than those described in paragraph (b) (7)(i) or (ii) of this section and that are designated by the Department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. In making this determination the Department may consider the following factors:

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(iv) The Department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7)(i), (ii), and (iii) of this section.

Renumber existing 61-9.122.26(b)(9) to (b)(8).

Delete existing 122.26(b)(10) and replace with note only, to read:

Note: "Notice of Intent" is defined at 122.28(b)(4).

Renumber existing 61-9.122.26(b)(11), (12) and (13) to (9), (10) and (11).

Replace existing 61-9.122.26(b)(14) introductory paragraph; subitems 122.26(b)(14)(i) through (ix) remain the same; replace 122.26(b)(14)(x) and (xi):

(14) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this regulation. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

(x) Construction activity including clearing, grading, and excavation, except —operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

Renumber existing 61-9.122.26(b)(15) to (b)(13):

Renumber existing 61-9.122.26(b)(16) to (b)(21).

Add new 61-9.122.26(b)(15) and (16) to read:

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor (“R” in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA’s Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Department that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a “total maximum daily load” (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Department that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Department, or in States with approved NPDES programs either the Department or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

Exhibit 1 to Section 122.26(b)(15) - Summary of Coverage of “Storm Water Discharges Associated with Small Construction Activity” Under the NPDES Storm Water Program

Automatic Designation: Required Nationwide Coverage	Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres. Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (See Section 122.26(b)(15)(i).)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator.	Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants. (See Section 122.26(b)(15)(ii).)
Potential Waiver: Waiver from Requirements as Determined by the NPDES Permitting Authority.	Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five or (2) that the activity will occur within an area where controls are not needed based on a TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutants of concern. (See Section 122.26(b)(15)(i).)

(16) Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States and

(ii) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Renumber existing 61-9.122.26(b)(17) to (b)(12):

Renumber existing 61-9.122.26(b)(18) to (b)(20):

Add new 61-9.122.26(b)(17), (18) and (19) to read:

(17) Small MS4 means a small municipal separate storm sewer system.

(18) Municipal separate storm sewer system means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) MS4 means a municipal separate storm sewer system.

Replace 61-9.122.26(c) introductory paragraph; replace (c)(1) introductory paragraph; subitems (c)(1)(i), (c)(1)(i)(A) -(E)(3) remain the same.

(c) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity;

(1) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Department is evaluating for designation (see R.61-9.124.52(c)) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of section 122.21 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C and Form 2F. Applicants for new sources or new discharges (as defined in section 122.2 of this regulation) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

Replace 61-9.122.26(c)(1)(i)(E)(4); (E)(5) and (6) remain the same:

(4) Any information on the discharge required under section 122.21(g)(7)(vi) and (vii) of this regulation;

Replace 61-9.122.26(c)(1)(i)(F) to read:

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of section 122.21(g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), (g)(7)(viii); and

Replace 61-9.122.26(c)(1)(ii); subitems (ii)(A) through (F) remain the same:

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of section 122.21(g) and paragraph (c)(1)(i) of this section.

Replace 61-9.122.26(d)(2)(iv)(C)(2) to read:

(2) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under section 122.21(g)(7)(vi) and (vii).

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Replace 61-9.122.26(d)(2)(viii) to read:

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H, or I from any of the permit application requirements under this paragraph, except where authorized under this section.

Replace 61-9.122.26(e)(1) title; 26(e)(1)(i) remains the same:

(1) Storm water discharges associated with industrial activity.

Replace 61-9.122.26(e)(1)(ii) to read:

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power plant, or uncontrolled sanitary landfill, the permit application must be submitted to the Department by March 10, 2003.

Replace 61-9.122.26(e)(5) introduction and 26(e)(5)(i) to read:

(5) A permit application shall be submitted to the Department within 180 days of notice, unless permission for a later date is granted by the Department [see R.61-9.124.52(c)], for:

(i) A storm water discharge that either the Department or the EPA Regional Administrator determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States [see paragraphs (a)(1)(v) and (b)(15)(ii) of this section];

Add 61-9.122.26(e)(8) and (9) to read:

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see section 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under section 122.33 must be submitted to the Department by:

(i) March 10, 2003 if designated under section 122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under section 40 CFR 123.35(d)(3) (see section 122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under section 122.32(a)(2). (See section 122.33(c)(2)).

Replace 61-9.122.26(f)(4) and (5) to read:

(4) Any person may petition the Department for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Department shall make a final determination on the petition within 180 days after its receipt.

Add 61-9.122.26(g) to read:

(g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. “No exposure” means that all industrial materials and activities are protected by a storm resistant-shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) Qualification. To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;

(ii) Complete and sign (according to section 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five years;

(iv) Allow the Department to inspect the facility to determine compliance with the “no exposure” conditions;

(v) Allow the Department to make any “no exposure” inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed” means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) Limitations.

(i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

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(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the Department retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Department in determining if the facility qualifies for the no-exposure exclusion:

(i) The legal name, address and phone number of the discharger [see section 122.21(b)];

(ii) The facility name and address, the county name, and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, or similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All “no exposure” certifications must include the following certification statement, and be signed in accordance with the signatory requirements of section 122.22: “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the Department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Revise item 122.27(a) to read:

(a) Permit requirement. Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

Replace 61-9.122.28(a)(1) introductory; subitems 28(a)(1)(i) through (viii) remain the same:

(1) Area. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries such as:

Replace 61-9.122.28(a)(2) introductory; replace 28(a)(2)(ii); 28(a)(2)(i) and 28(a)(2)(ii)(A) through (E) remain the same:

(2) Sources. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of “treatment works treating domestic sewage”, if the sources or “treatment works treating domestic sewage” within each category or subcategory all:

Add 61-9.122.28(a)(3) and (4) to read:

(3) Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water-quality-based limits imposed pursuant to 40CFR122.44, the sources in that specific category or subcategory shall be subject to the same water-quality-based effluent limitations.

(4) Other requirements.

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(i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

Replace 61-9.122.28(b)(1) to read:

(1) In general. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R61-9.124. Special procedures for issuance are found at 40 CFR 123.44.

Replace 61-9.122.28(b)(2)(v) to read:

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

Add 61-9.122.28(b)(4) to read:

(4) Definitions:

(i) "General Permit Application" means an application filed by a potential permittee with the Department for a general permit.

(ii) Notice of Intent" (NOI) means a form used by potential permittees to notify the Department, within a specified time, that they intend to comply with the general permit or that they do not wish to be covered by the general permit and wish an individual permit.

Add 61-9.122.30 through 122.36 to read:

122.30 What are the objectives of the storm water regulations for small MS4s?

(a) Sections 122.30 through 122.36 are written in a ``readable regulation`` format.

(b) Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources. (Because the storm water program is part of the National Pollutant Discharge Elimination System (NPDES) Program, you should also refer to section 122.1 which addresses the broader purpose of the NPDES program.)

(c) Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including changing natural hydrologic patterns and elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

(d) EPA and the Department strongly encourage partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

122.31 Indian Tribes. As a Tribe, what is my role under the NPDES storm water program? As a Tribe you may:

(a) Be authorized to operate the NPDES program including the storm water program, after EPA determines that you are eligible for treatment in the same manner as a State under sections 123.31 through 123.34. (If you do not have an authorized NPDES program, the Department implements the program for discharges on your reservation.);

(b) Be classified as an owner of a regulated small MS4, as defined in section 122.32. (Designation of your Tribe as an owner of a small MS4 for purposes of this part is an approach that is consistent with U.S. EPA's 1984 Indian Policy of operating on a government-to-government basis with EPA looking to Tribes as the lead governmental authorities to address environmental issues on their reservations as appropriate. If you operate a separate storm sewer system that meets the definition of a regulated small MS4, you are subject to the requirements under sections 122.33 through 122.35. If you are not designated as a regulated small MS4, you may ask EPA to designate you as such for the purposes of this part.); or

(c) Be a discharger of storm water associated with industrial activity or small construction activity under sections 122.26(b)(14) or (b)(15), in which case you must meet the applicable requirements. Within Indian country, the NPDES permitting authority is the Department, unless you are authorized to administer the NPDES program.

122.32 Is an operator of a small MS4 regulated under the NPDES storm water program?

(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation, and:

(1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.); or

(2) You are designated by the NPDES permitting authority, including where the designation is pursuant to sections 123.35(b)(3) or (b)(4) of 40 CFR122, or is based upon a petition under section 122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with sections 122.33 through 122.35.

(c) The Department may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with section 122.33(a) if circumstances change. (See also section 123.35(b) of 40CFR123.)

(d) The Department may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

(1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see section 123.35(b)(4) of 40CFR123) and

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(2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA-approved or established total maximum daily load (TMDL) that addresses the pollutant(s) of concern.

(e) The Department may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

(1) The Department has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

(2) For all such waters, the Department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA-approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

(3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

(4) The Department has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

122.33 How does an operator of a regulated, small MS4 apply for an NPDES permit, and when must he apply?

(a) If you operate a regulated, small MS4 under section 122.32, you must seek coverage under a NPDES permit issued by the Department. As South Carolina is an NPDES authorized State, then the State is your NPDES permitting authority.

(b) You must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If the Department has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by section 122.34(d). You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit an NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2) (i) If you are seeking authorization to discharge under an individual permit and wish to implement a program under section 122.34, you must submit an application to the Department that includes the information required under sections 122.21(f) and 122.34(d), an estimate of the area in square miles served by your small MS4, and any additional information that your NPDES permitting authority requests. A storm sewer map that satisfies the requirement of section 122.34(b)(3)(i) will satisfy the map requirement in section 122.21(f)(7).

(ii) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under section 122.34, you will need to comply with the permit application requirements of section 122.26(d). You must submit both Parts of the application requirements in sections 122.26(d)(1) and (2) by March 10, 2003. You do not need to submit the information required by sections 122.26(d)(1)(ii) and (d)(2) regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(iii) If allowed by the Department, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of section 122.26, rather than the requirements of section 122.34. You do not need to comply with the specific application requirements of section 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in section 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(c) If you operate a regulated, small MS4:

(1) Designated under section 122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the Department has established a phasing schedule under 40CFR123.35(d)(3).

(2) Designated under section 122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of receiving the notice of designation, unless the Department grants a later date.

122.34 As an operator of a regulated, small MS4, what will my NPDES MS4 storm water permit require?

(a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under section 122.26(d). For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMP) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to section 122.33 constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The Department will specify a period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) Minimum control measures:

(1) Public education and outreach on storm water impacts. You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(2) Public involvement/participation. You must, at a minimum, comply with State and local public notice requirements when implementing a public involvement/ participation program.

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(3) Illicit discharge detection and elimination.

(i) You must develop, implement and enforce a program to detect and eliminate illicit discharges [as defined at section 122.26(b)(2)] into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and locations of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm-water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)], uncontaminated, pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(4) Construction site storm water runoff control.

(i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for storm water discharges associated with small construction activity in accordance with section 122.26(b)(15)(i), you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete-truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public; and

(F) Procedures for site inspection and enforcement of control measures.

(5) Post-construction storm water management in new development and redevelopment.

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMP) appropriate for your community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal, or local law; and

(C) Ensure adequate long-term operation and maintenance of BMP.

(6) Pollution prevention/good housekeeping for municipal operations. You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(c) If an existing, qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the Department may include conditions in your NPDES permit that direct you to follow the Department's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d) (1) In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to the Department the following information:

(i) The best management practices (BMP) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;

(ii) The measurable goals for each of the BMP including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(iii) The person or persons responsible for implementing or coordinating your storm water management program.

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(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or the Department has provided or issued a menu of BMP that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMP, however, you still must comply with other requirements of the general permit, including good faith implementation of BMP designed to comply with the minimum measures.

(e) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The Department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(f) You must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of sections 122.41 through 122.49, as appropriate.

(g) Evaluation and assessment:

(1) Evaluation. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

Note to Paragraph (g)(1): The Department may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

(2) Recordkeeping. You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the Department only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see section 122.7 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

(3) Reporting. Unless you are relying on another entity to satisfy your NPDES permit obligations under section 122.35(a), you must submit annual reports to the Department for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the Department requires more frequent reports. Your report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

122.35 May an operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under section 122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by section 122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the Department may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the Department itself is responsible. Where the Department does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of section 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in sections 122.33 through 122.35? NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in section 122.35(b).

Renumber existing 61-9.122.44(a) to 122.44(a)(1) and add 122.44(a)(2) to read:

(a) (1) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under section 301 of the CWA, new source performance standards promulgated under section 306 of CWA, or case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with section 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of section 122.29(d) (protection period).

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N if

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the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an expressed permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

Replace 61-9.122.44(c) in its entirety to read:

(c) Reopener clause: for any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph, if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit or controls a pollutant or practice not limited in the permit.

Renumber 61-9.122.44(j)(2) to 122.44(j)(2)(i) and add 44(j)(2)(ii) to read:

(2) (i) Submit a local program when required by and in accordance with R.61-9.403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in R.61-9.403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of R.61-9.403.

(ii) Provide a written technical evaluation of the need to revise local limits under R.61-9.403.5(c)(1), following permit issuance or reissuance.

Add new 61-9.122.44(k)(2) and renumber existing (k)(2) and (3) to (k)(3) and (4):

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Replace R.61-9.122.44(q) in its entirety to read:

(q) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R61-9.124.59.

Add 61-9.122.44(r) to read:

(r) [Reserved.]

Add 61-9.122.44(s) to read:

(s) Qualifying State, Tribal, or local programs.

(1) For storm water Discharges associated with small construction activity identified in section 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in section 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

Replace 61-9.122.45(h)(1) to read:

(1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by section 122.48 shall also be applied to the internal waste streams.

Replace 122.62(d)(8)(ii) to read:

(ii) When a discharger is no longer eligible for net limitations, as provided in section 122.45(g)(1)(ii).

Replace 122.62(d)(14) to read:

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(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in section 122.34(b) when:

(i) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

Replace 61-9.122.64(b) to read:

(b) The Department shall follow the applicable procedures in R.61-9.124 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Department shall follow R.61-9.124 procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use 40 CFR 22 procedures for NPDES permit terminations.

Replace Appendix F to read:

APPENDIX F - INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix F)

Replace Appendix G to read:

APPENDIX G - INCORPORATED PLACES WITH POPULATIONS GREATER THAN 100,000 AND LESS THAN 250,000 ACCORDING TO 1990 DECENNIAL CENSUS BY BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix G)

Replace Appendix H to read:

APPENDIX H - COUNTIES WITH UNINCORPORATED URBANIZED AREAS WITH A POPULATION OF 250,000 OR MORE ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix H)

Replace Appendix I to read:

APPENDIX I - COUNTIES WITH UNINCORPORATED URBANIZED AREAS GREATER THAN 100,000, BUT LESS THAN 250,000 ACCORDING TO THE 1990 DECENNIAL CENSUS BY THE BUREAU OF CENSUS (Refer to 40 CFR Part 122, Appendix I)

Add 61-9.122 Appendix J to read:

Appendix J - NPDES Permit Testing Requirements for Publicly Owned Treatment Works [section 122.21(j)]

Table 1A--Effluent Parameters for All POTWS

Biochemical oxygen demand (BOD₅ or CBOD₅), 5-day
Fecal coliforms
Design Flow Rate

pH
 Temperature
 Total suspended solids

Table 1--Effluent Parameters for All POTWS With a Flow Equal to or Greater Than 0.1 MGD

Ammonia (as N)
 Chlorine (total residual, TRC)
 Dissolved oxygen
 Nitrate/nitrite
 Kjeldahl nitrogen
 Oil and grease
 Phosphorus
 Total dissolved solids

Table 2--Effluent Parameters for Selected POTWS

Cyanide	
Hardness	
Metals (total recoverable), cyanide and total phenols	
Antimony	
Arsenic	Beryllium
Cadmium	Chromium
Copper	Lead
Mercury	Nickel
Selenium	Silver
Thallium	Zinc
Phenolic compounds, total	
Volatile organic compounds	
Acrolein	Acrylonitrile
Benzene	Bromoform
Carbon tetrachloride	Chlorobenzene
Chlorodibromomethane	Chloroethane
2-chloroethylvinyl ether	Chloroform
Dichlorobromomethane	1,1-dichloroethane
1,2-dichloroethane	Trans-1,2-dichloroethylene
1,1-dichloroethylene	1,2-dichloropropane
1,3-dichloropropylene	Ethylbenzene
Methyl bromide	Methyl chloride
Methylene chloride	1,1,2,2-tetrachloroethane
Tetrachloroethylene	Toluene
1,1,1-trichloroethane	1,1,2-trichloroethane
Trichloroethylene	Vinyl chloride
Acid-extractable compounds	
P-chloro-m-cresol	2-chlorophenol
2,4-dichlorophenol	2,4-dimethylphenol
4,6-dinitro-o-cresol	2,4-dinitrophenol
2-nitrophenol	4-nitrophenol
Pentachlorophenol	Phenol
2,4,6-trichlorophenol	

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Base-neutral compounds:

Acenaphthene	Acenaphthylene
Anthracene	Benzidine
Benzo(a)anthracene	Benzo(a)pyrene
3,4-benzofluoranthene	Benzo(ghi)perylene
Benzo(k)fluoranthene	Bis (2-chloroethoxy) methane
Bis (2-chloroethyl) ether	Bis (2-chloroisopropyl) ether
Bis (2-ethylhexyl) phthalate	4-bromophenyl phenyl ether
Butyl benzyl phthalate	2-chloronaphthalene
4-chlorophenyl phenyl ether	Chrysene
Di-n-butyl phthalate	Di-n-octyl phthalate
Dibenzo(a,h)anthracene	1,2-dichlorobenzene
1,3-dichlorobenzene	1,4-dichlorobenzene
3,3'-dichlorobenzidine	Diethyl phthalate
Dimethyl phthalate	2,4-dinitrotoluene
2,6-dinitrotoluene	1,2-diphenylhydrazine
Fluoranthene	Fluorene
Hexachlorobenzene	Hexachlorobutadiene
Hexachlorocyclo-pentadiene	Hexachloroethane
Indeno(1,2,3-cd)pyrene	Isophorone
Naphthalene	Nitrobenzene
N-nitrosodi-n-propylamine	N-nitrosodimethylamine
N-nitrosodiphenylamine	Phenanthrene
Pyrene	1,2,4 -trichlorobenzene

At Table of Contents for 61-9.124, delete the following entries:

Part E, Part F, and Appendix A

Replace 61-9.124(1) to read:

124.1 Purpose and scope. This part contains the Department's procedures for issuing, modifying, revoking and reissuing, or terminating all NPDES, Land Application, and State permits (including "sludge-only" permits issued pursuant to R.61-9.122.1(b)(2)).

Replace 61-9.124.2(b) to read:

(b) (Reserved.)

Replace 61-9.124.5(d) to 124.5(d)(1), (2) and (3) to read:

(d) (1) If the Department tentatively decides to terminate a permit under section 122.64(a) (NPDES) or a permit under section 122.64(b) (NPDES) where the permittee objects, the Department shall issue a notice of intent to terminate.

(2) If the Department tentatively decides to terminate a permit under R.61-9.505.64, it shall issue a notice of intent to terminate.

(3) A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 124.6.

Add 61-9.124.8(b)(9) to read:

(9) Justification for waiver of any application requirements under section 122.21(j) or (q) of this chapter.

Replace 61-9.124.52(c) to read:

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see R.61-9.122.26(a)(1)(v), (a)(9)(iii), and (c)(1)(v)), the Department may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 180 days of notice, unless permission for a later date is granted by the Department. The question whether the initial designation was proper will remain open for consideration during the public comment period under section 124.11 and in any subsequent hearing.

Replace R.61-9.124.56(b)(1)(ii) - (iv) and add 61-9.124.56(b)(1)(v) and (vi) to read:

(ii) Limitations on internal waste streams under R.61-9.122.45(i);

(iii) Limitations on indicator pollutants under R.61-9.125.3(g);

(iv) Limitations set on a case-by-case basis under R.61-9.125.3(c)(2) or (c)(3), or pursuant to section 405(d)(4) of the CWA;

(v) Limitations to meet the criteria for permit issuance under R61-9.122.4(i); or

(vi) Waivers from monitoring requirements granted under R61-9.122.44(a).

At the end of 61-9.124, delete Part E, Part F and Appendix A.

At Table of Contents in 61-9.125, delete Part K and sections under Part K; replace and reserve Part K to read:

Part K (Reserved)

Replace 61-9.125.32(a) to read:

(a) A written request for a variance under this part D shall be submitted in duplicate to the Department in accordance with R61-9.122.21(m)(1) and R61-9.124.3.

Delete the text of Part K and section 125.100 through 104 ; reserve Part K to read:

61-9.125 Part K (Reserved)

Replace the title at 61-9.403.8 to read:

403.8 POTW Pretreatment Program Requirements: Development and Implementation by POTW.

Replace 61-9.403.8(c) to read:

(c) Incorporation of approved programs in permits. A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the State to incorporate the approved Program as enforceable conditions of the Permit. The

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modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in section 403.11 shall be deemed a minor Permit modification subject to the procedures in R.61-9.122.63.

Replace 61-9.403.8(f)(6) to read:

(6) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in section 403.3(n)(1). The list shall identify the criteria in section 403.3(n)(1) applicable to each industrial user and, for industrial users meeting the criteria in section 403.3(n)(1)(ii), shall also indicate whether the POTW has made a determination pursuant to section 403.3(n)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Department pursuant to section 403.9 as a non-substantial modification pursuant to section 403.18(d). Modifications to the list shall be submitted to the Department pursuant to section 403.12(i)(1).

Replace 61-9.403.11(b)(1)(i)(A) and (B) to read:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish, and wildlife resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(B) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that provides meaningful public notice.

Add new 61-9.403.12(i)(4) and renumber existing (4) to (5) to read:

(4) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Department; and

(5) Any other relevant information requested by the Department;

Delete the text of existing 61-9.403.18(b) and (c) and replace with new (b), (c), (d), and (e) to read:

(b) Substantial modifications defined. Substantial modifications include:

(1) Modifications that relax POTW legal authorities [as described in section 403.8(f)(1)], except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under section 403.5(c);

(3) Changes to the POTW's control mechanism, as described in section 403.8(f)(1)(iii);

(4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Department on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less-stringent requirements being imposed on Industrial Users of the POTW.

(c) Approval procedures for substantial modifications.

(1) The POTW shall submit to the Department a statement of the basis for the desired program modification, a modified program description [see section 403.9(b)], or such other documents the Department determines to be necessary under the circumstances.

(2) The Department shall approve or disapprove the modification based on the requirements of section 403.8(f) and using the procedures in sections 403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Department.

(3) The Department need not publish a notice of decision under section 403.11(e) provided the notice of request for approval under section 403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

(4) Notices required by section 403.11 may be performed by the POTW provided that the Department finds that the POTW notice otherwise satisfies the requirements of section 403.11.

(d) Approval procedures for non-substantial modifications.

(1) The POTW shall notify the Department of any non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (c)(1) of this section.

(2) Within 45 days after the submission of the POTW's statement, the Department shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) If the Department does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

(e) Incorporation in permit. All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with section R.61-9.122.63(g).

At the end of the Part, revise the authority statement to read:

Authority: 33 U.S.C. 1251, et seq.; section 54(c)(2) of the Clean Water Act of 1977, (Pub.L.95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L.92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L.100-4); secs. 2002 and 3018(d) of the Solid Waste Disposal Act as amended; 40 CFR 403, 43 FR 27746, June 26, 1978; Effective August 25, 1978; Amended by 44 FR 32854, June 7, 1979; Effective August 13, 1979; 45 FR 72945, November 3, 1980; Revised by 46 FR 6439, January 28, 1981; Amended by 47 FR 4521, February 1, 1982; 47 FR 42688, September 28, 1982; 48 FR 2776, January 21, 1983; 49 FR 5132, February 10, 1984; 49 FR 21037, May 17, 1984; 49 FR 28059, July 10, 1984; 40 FR 31221, August 3, 1984; 50 FR 38811, September 25, 1985; 51 FR 16030, April 30, 1986; 51 FR 20430, June 4, 1986; Corrected by 51 FR 23759, July 1, 1986, Amended by 51 FR 36372, October 9, 1986; 52 FR 1600, January 14, 1987;

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52 FR 42435, November 5, 1987; 53 FR 40610, October 17, 1988; 54 FR 254, January 4, 1989; 55 FR 142, July 24, 1990; 62 FR 38406, July 17, 1997; 64 FR 42554, August 4, 1999.

Revise 61-9.403, Appendix G.II to change Chromium and Copper to read:

Chromium (total)	100 ³	---	100 ³	---
Copper	---	46 ³	100	1400

Revise 61-9.403, Appendix G.II, Key and notes to read:

KEY: LA - land application

I - incineration

- 1 - Active sewage sludge unit without a liner and leachate collection system.
- 2 - Active sewage sludge unit with a liner and leachate collection system.
- 3 - Value expressed in grams per kilogram - dry weight basis.

Replace 61-9.503.2(d) to read:

(d) Unless otherwise specified in subpart E, compliance with the requirements in sections 503.41 (c) through (r), 503.43(c), (d), and (e), 503.45(a)(1) and (b) through (f), 503.46(a)(1), (a)(3), and (c), and 503.47(f) that were revised on September 3, 1999, shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in subpart E, compliance with the revised requirements shall be achieved as expeditiously as practicable but no later than September 4, 2001.

Replace 61-9.503.9(e), (9)(o), (9)(q) and (9)(bb) to read:

(e) "CWA" see R.61-9.122.2(b) Definitions.

(o) "Municipality" see R.61-9.122.2(b) Definitions. The definition includes under section 503 of this regulation a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(q) "Person" see definition in R.61-9.122.2(b) Definitions.

(bb)"Wetlands" see R.61-9.122.2(b) Definitions.

Replace 61-9.503.10(d), (e), (f) and (g) to read:

(d) The requirements in this part may be applied by the Department, on a case-by-case basis, when a bulk material derived from sewage sludge is applied to the land if the sewage sludge from which the bulk material is derived meets the ceiling concentrations in Table 1 of section 503.13 and the pollutant concentrations in Table 3 of section 503.13; the Class A pathogen requirements in section 503.32(a); and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8).

(e) Sewage sludge sold or given away in a bag or other container for application to the land. The general requirements in section 503.12 and the management practices in section 503.14 do not apply, except for section 503.12(o), section 503.12(p), section 503.12(q), and section 503.14(e), when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other

container for application to the land meets the ceiling concentrations in Table 1 of section 503.13 and the pollutant concentrations in Table 3 of section 503.13; the Class A pathogen requirements in section 503.32(a); and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8).

(f) The general requirements in section 503.12 and the management practices in section 503.14 do not apply, except for section 503.12(o), section 503.12(p), section 503.12(q), and section 503.14(e), when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in Table 1 of section 503.13 and the pollutant concentrations in Table 3 of section 503.13; the Class A pathogen requirements in section 503.32(a); and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8).

(g) The requirements in this part do not apply, except for section 503.14(e), when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the ceiling concentrations in Table 1 of section 503.13 and the pollutant concentrations in Table 3 of section 503.13; the Class A pathogen requirements in section 503.32(a); and one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8).

Replace 61-9.503.16(a)(1) to read:

(1) The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3 and Table 4 of section 503.13; the pathogen density requirements in section 503.32(a) and ~~in~~ section 503.32(b)(2) and the vector attraction reduction requirements in section 503.33(b)(1) through (b)(4) and sections 503.33(b)(7) and (b)(8) shall be the frequency in Table 1 of section 503.16. Facilities which generate less than 290 metric tons of sludge per year and dispose of the sludge once per year or less, may request a reduction in monitoring to a frequency of once per year. The Department will review these requests on a case-by-case basis.

Following 61-9.503.16(a)(1), replace Table 1 & note of 503.16 to read:

TABLE 1 OF SECTION 503.16 -- FREQUENCY OF MONITORING - LAND APPLICATION	
<u>Amount of sewage sludge¹</u> (metric tons per 365-day period)	<u>Frequency</u>
Greater than zero but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000.	Once per 60 days (six times per year)
Equal to or greater than 15,000.	Once per month (12 times per year)

¹Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

Replace 61-9.503.16(a)(2) to read:

(2) After the sewage sludge has been monitored for two years at the frequency in Table 1 of section 503.16, the Department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density

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requirements in section 503.32(a)(5)(ii) and (a)(5)(iii), but in no case shall the frequency of monitoring be less than once per year when sewage sludge is applied to the land.

Replace 61-9.503.17(a)(1)(ii) to read:

(ii) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in section 503.32(a) and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through 503.33(b)(8)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(2)(ii) to read:

(ii) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in section 503.32(a) and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(3)(i)(B) to read:

(B) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in section 503.32(a) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(3)(ii)(A) to read:

(A) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in section 503.14 and the vector attraction reduction requirement in [insert either section 503.33(b)(9) or (b)(10)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(4)(i)(B) to read:

(B) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in section 503.32(b) and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8), if one of those requirements is met] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(4)(ii)(A) to read:

(A) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in section 503.14, the site restrictions in section 503.32(b)(5), and the vector attraction reduction requirements in [insert either section 503.33(b)(9) or (b)(10), if one of those requirements is met] was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Add new 61-9.503.17(a)(4)(ii)(E) to read:

(E) The date bulk sewage sludge is applied to each site.

Replace 61-9.503.17(a)(5)(i)(B) to read:

(B) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either section 503.32(a) or 503.32(b)] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8), if one of those requirements is met] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(a)(5)(ii)(C) ,(F) , (H) , (J) and (L) to read:

(C) The date bulk sewage sludge is applied to each site.

(F) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in section 503.12(e)(2) was prepared for each site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(H) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in section 503.14 was prepared for each site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(J) The following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in section 503.32(b): “I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in section 503.32(b)(5) for each site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(L) The following certification statement when the vector attraction reduction requirement in either section 503.33(b)(9) or (b)(10) is met: “I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either section 503.33(b)(9) or 503.33(b)(10)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

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Replace 61-9.503.17(a)(6)(iii) to read:

(iii) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in section 503.14(e), the Class A pathogen requirement in section 503.32(a), and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through section 503.33(b)(8)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

Replace 61-9.503.17(b)(3), (6) and (7) to read [items (b)(4) and (5) remain the same]:

(3) The date domestic septage is applied to each site.

(6) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either section 503.32(c)(1) or section 503.32(c)(2)] and the vector attraction reduction requirements in [insert section 503.33(b)(9), section 503.33(b)(10), or section 503.33(b)(12)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(7) A description of how the pathogen requirements in either section 503.32(c)(1) or (c)(2) are met.

Replace 61-9.503.18(a)(2) to read:

(2) The information in section 503.17(a)(5)(ii)(A) through (a)(5)(ii)(G) on or before February 19th of each year, for the period of January 1 through December 31 of the previous calendar year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of section 503.13 is reached at a land application site.

Replace 61-9.503.21(c) to read:

(c) “Contaminate an aquifer” means to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) or R.61-68 (Water Classifications and Standards) to be exceeded in the ground water or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b) or R.61-68 (Water Classifications and Standards).

Replace 61-9.503.22(b) to read:

(b) An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to either section 402 or 404 of the CWA, shall close by March 22, 1994, unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the Department.

Replace 61-9.503.26(a)(1) to read:

(1) The frequency of monitoring for the pollutants in Tables 1 and 2 of section 503.23; the pathogen density requirements in section 503.32(a) and in section 503.32(b)(2); and the vector attraction reduction requirements in section 503.33(b)(1) through (b)(4) and section 503.33(b)(7) and (b)(8) for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table 1 of section 503.26. Facilities which generate less than 290 metric tons of sludge per year and dispose of the sludge once a year or less, may request a reduction in monitoring to a frequency of once per year. The department will review these requests on a case-by-case basis.

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Following 61-9.503.26(a)(1), replace Table 1 and note of 503.26 to read:

TABLE 1 OF SECTION 503.26 -- FREQUENCY OF MONITORING - SURFACE DISPOSAL	
<u>Amount of sewage sludge¹ (metric tons per 365 day period)</u>	<u>Frequency</u>
Greater than zero but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	ONCE PER 60 DAYS (SIX TIMES PER YEAR)
Equal to or greater than 15,000	ONCE PER MONTH (12 TIMES PER YEAR)

¹Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

Replace 61-9.503.26(a)(2) to read:

(2) After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the Department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in section 503.32(a)(5)(ii) and (a)(5)(iii), but in no case shall the frequency of monitoring be less than once per year when sewage sludge is placed on an active sewage sludge unit.

Replace 61-9.503.27(a)(1)(ii) to read:

(ii) The following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert section 503.32(a), section 503.32(b)(2), section 503.32(b)(3), or section 503.32(b)(4), when one of those requirements is met] and the vector attraction reduction requirements in [insert one of the vector attraction reduction requirements in section 503.33(b)(1) through (b)(8), if one of those requirements is met] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Replace 61-9.503.27(a)(2)(ii) to read:

(ii) The following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in section 503.24 and the vector attraction reduction requirement in [insert one of the requirements in section 503.33(b)(9) through section 503.33(b)(11), if one of those requirements is met] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Replace 61-9.503.27(b)(1)(i) to read:

(i) The following certification statement: "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirements in section 503.33(b)(12) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Replace 61-9.503.27(b)(2)(i) to read:

(i) The following certification statement: “I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in section 503.24 and the vector attraction reduction requirements in [insert section 503.33(b)(9) through section 503.33(b)(11), if one of those requirements is met] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine or imprisonment.”

Replace 61-9.503.31(g) to read:

(g) “pH” means the logarithm of the reciprocal of the hydrogen ion concentration measured at twenty-five degrees Centigrade or measured at another temperature and then converted to an equivalent value at twenty-five degrees Centigrade.

Replace 61-9.503.32(b)(2)(i) to read:

(i) Seven representative samples of the sewage sludge that is used or disposed shall be collected.

Replace 61-9.503.32(b)(5)(v) to read:

(v) Animals shall not be grazed on the land for 30 days after application of sewage sludge.

Replace 61-9.503.33(b)(10)(i) to read:

(i) Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the Department.

Replace 61-9.503.41(c) through 41(o) with 41(c) through (r) to read:

(c) “Average daily concentration” is the arithmetic mean of the concentrations of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

(d) “Control efficiency” is the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

(e) “Dispersion factor” is the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

(f) “Fluidized bed incinerator” is an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

(g) “Hourly average” is the arithmetic mean of all measurements taken during an hour. At least two measurements must be taken during the hour.

(h) “Incineration” is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

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(i) "Incinerator operating combustion temperature" is the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

(j) "Monthly average" is the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

(k) "Performance test combustion temperature" is the arithmetic mean of the average combustion temperatures in the hottest zone of the furnace for each of the runs in a performance test.

(l) "Risk specific concentration" is the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

(m) "Sewage sludge feed rate" is either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365 day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

(n) "Sewage sludge incinerator" is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

(o) "Stack height" is the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 65 meters. When the difference is greater than 65 meters, stack height is the creditable stack height determined in accordance with 40 CFR 51.100 (ii).

(p) "Total hydrocarbons" means the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

(q) "Wet electrostatic precipitator" is an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

(r) "Wet scrubber" is an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Replace 61-9.503.43(c)(1) in entirety to read:

(1) The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times \text{NAAQS} \times 86,400}{\text{DF} \times (1 - \text{CE}) \times \text{SF}} \quad (\text{Equation 4})$$

Where:

C = Average daily concentration of lead in sewage sludge.

NAAQS = National Ambient Air Quality Standard for lead in micrograms per cubic meter.

DF = Dispersion factor in micrograms per cubic meter per gram per second.

CE = Sewage sludge incinerator control efficiency for lead in hundredths.

SF= Sewage sludge feed rate in metric tons per day (dry weight basis).

Replace 61-9.503.43(c)(2), (2)(i), (2)(ii), and (3) to read:

(2) The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with section 503.43(e).

(i) When the sewage sludge stack height is 65 meters or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

(ii) When the sewage sludge incinerator stack height exceeds 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.100 (ii) and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

(3) The control efficiency (CE) for equation (4) shall be determined from a performance test of the sewage sludge incinerator, in accordance with section 503.43(e).

Replace 61-9.503.43(d)(1) in its entirety to read:

(d) Pollutant limit - arsenic, cadmium, chromium, and nickel.

(1) The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using equation (5).

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{(Equation 5)}$$

Where:

C = Average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.

CE = Sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.

DF = Dispersion factor in micrograms per cubic meter per gram per second.

RSC = Risk specific concentration in micrograms per cubic meter.

SF = Sewage sludge feed rate in metric tons per day (dry weight basis).

Following 61-9 .503.43(d)(2), replace the title of Table 1 of Section 503.43 to read:

TABLE 1 OF SECTION 503.43 -- RISK-SPECIFIC CONCENTRATION FOR ARSENIC, CADMIUM, AND NICKEL

Replace 61-9.503.43(d)(3) to read:

(3) The risk specific concentration for chromium used in equation (5) shall be obtained from Table 2 of section 503.43 or shall be calculated using equation (6).

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Following 61-9.503.43(d)(3), replace the title of Table 2 of Section 503.43 to read:

TABLE 2 OF SECTION 503.43 — RISK-SPECIFIC CONCENTRATION FOR CHROMIUM

Replace 61-9.503.43(d)(4) in its entirety:

(4) The dispersion factor (DF) in equation (5) shall be determined from an air dispersion model in accordance with section 503.43(e).

(i) When the sewage sludge incinerator stack height is equal to or less than 65 meters, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

(ii) When the sewage sludge incinerator stack height is greater than 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.100 (ii) and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

Replace 61-9.503.43((d)(5) to read:

(5) The control efficiency (CE) for equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with section 503.43(e).

Insert a new 61-9.503.43(e) and move existing (e) to (f) to read:

(e) Air dispersion modeling and performance testing.

(1) The air dispersion model used to determine the dispersion factor in section 503.43.(c)(2) and (d)(4) shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in section 503.43(c)(3) and (d)(5) shall be appropriate for the type of sewage sludge incinerator.

(2) For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the Department thirty (30) days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

(3) The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in section 503.43(c)(3) and (d)(5) after September 3, 1999:

(i) The performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator.

(ii) The Department shall be notified at least thirty (30) days prior to any performance test so the Department may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used.

(iii) Each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

(4) The pollutant limits in section 503.43(c) and (d) of this section shall be submitted to the permitting authority no later than thirty (30) days after completion of the air dispersion modeling and performance test.

(5) Significant changes in geographical or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

(f) Additional parameters may be required in the initial analysis and subsequent monitoring thereafter, but such needs will be assessed on an individual project basis. Any pollutant required for monitoring under effluent guidelines (40 CFR Part 136; Subchapter N (40 CFR Parts 400 through 402 and 404 through 471)) may be required (in a permit) to be monitored in the sewage sludge.

Replace 61-9.503.45(a)(1) to read:

(1) An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

Replace 61-9.503.45(b) through (f) to read:

(b) An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(c) An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(d) An instrument that continuously measures and records combustion temperatures shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(e) Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than twenty (20) percent.

(f) An air pollution control device shall be appropriate for the type of sewage sludge incinerator, and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device. For sewage sludge incinerators subject to the requirements in subpart O of 40 CFR part 60, operation of the air pollution control device shall not violate the requirements for the air pollution control device in subpart O of 40 CFR part 60. For all other sewage sludge incinerators, operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by section 503.43(c)(3) and (d)(5).

Add new 61-9.503.45(h) to read:

(h) The instruments required in section 503.45(a) through (d) shall be appropriate for the type of sewage sludge incinerator.

Replace 61-9.503.46(a)(1) and (a)(3) to read [(a)(2) remains the same]:

(1) The frequency of monitoring for beryllium shall be as required in subpart C of 40 CFR part 61, and for mercury as required in subpart E of 40 CFR part 61.

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(3) After the sewage sludge has been monitored for two years at the frequency in Table 1 of section 503.46, the Department may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

Replace 61-9.503.46(c) to read:

(c) Air pollution control device operating parameters. The frequency of monitoring for the sewage sludge incinerator air pollution control device operating parameters shall be specified by the Department.—For sewage sludge incinerators subject to the requirements in subpart O of 40 CFR part 60, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be the frequency of monitoring in subpart O of 40 CFR part 60. For all other sewage sludge incinerators, the appropriate air pollution control device operating parameters shall be monitored at least daily.

Replace 61-9.503.47(f) to read:

(f) The operating combustion temperatures for the sewage sludge incinerator.

Following 61-9.503, in Appendix B, replace B.6 to read:

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20 degrees Celsius).

Replace 61-9.504.9(d), (p), (r) and (bb) to read:

(d) “CWA” see R.61-9.122.2(b) Definitions.

(p) “Municipality” see R.61-9.122.2(b) Definitions. The definition includes under R.61-9.503 a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(r) “Person” see definition in R.61-9.122.2(b) Definitions.

(bb)“Wetlands” see R.61-9.122.2(b) Definitions.

Statement of Need and Reasonableness:

STATEMENT OF NEED AND REASONABLENESS FOR FEDERALLY REQUIRED AMENDMENTS OF R.61-9, WATER POLLUTION CONTROL PERMITS

This statement of need and reasonableness has been developed based on staff analysis pursuant to S.C. Code Section 1-23-115(C)(1) - (3) and (9) - (11):

DESCRIPTION OF REGULATION: R.61-9. Water Pollution Control Permits.

Purpose: To amend Regulation 61-9 in accordance with changes to Federal Regulation 40 CFR Parts 122, 124, 125, 403, and 503.

Legal Authority: This change to state law is authorized by S.C. Code Sections 48-1-10 through 350 and the Clean Water Act, 33 U.S.C. 1251, et seq., and regulations promulgated in the Federal Register on July 17, 1997, August 4, 1999, December 8, 1999, and May 15, 2000.

Plan for Implementation: The additional work required by the proposed amendments, mainly involving additional storm water efforts, will total about one (1) man-year per year. Existing staff will pursue these new tasks until additional resources can be obtained.

DETERMINATION OF NEED AND REASONABLENESS FOR THE PROPOSED REGULATION AND EXPECTED BENEFIT: This regulatory amendment is exempt from the requirements to develop a Preliminary Fiscal Impact Statement and a Preliminary Assessment Report because each change is necessary to maintain consistency with Federal Regulations. In amending the Federal regulations, the U.S. Environmental Protection Agency found the following:

(FR 7/17/97, 38406) The FR states the purpose of the amendment of this date as follows: “The new regulations will reduce the administrative burden and cost associated with maintaining approved pretreatment programs without affecting environmental protection.”

(FR 8/4/99) (Page 42434): The FR states the purpose of the amendment of this date as follows: “The Environmental Protection Agency (EPA) today amends permit application requirements and application forms for publicly owned treatment works (POTW) and other treatment works treating domestic sewage (TWTDS). TWTDS include facilities that generate sewage sludge, provide commercial treatment of sewage sludge, manufacture a product derived from sewage sludge, or provide disposal of sewage sludge.

“Today’s rule consolidates POTW application requirements, including information regarding toxics monitoring, whole effluent toxicity (WET) testing, industrial user and hazardous waste contributions, and sewer collection systems overflows. The most significant revisions require toxic monitoring by major POTW (and other pretreatment POTW) and limited pollutant monitoring by minor POTW. EPA believes that permitting authorities need this information in order to issue permits that adequately protect the Nation’s water resources.

“Form 2A replaces existing Standard Form A and Short Form A, used by POTW, to account for changes in the National Pollutant Discharge Elimination System (NPDES) program since the forms were issued in 1973.

“The regulations also clarify the requirements for TWTDS and allow the permitting authorities to obtain the information needed to issue permits that meet the requirements of the 40 CFR Part 503 sewage sludge use or disposal regulations. Form 2S replaces the existing Interim Sewage Sludge Form.” Form 2S also replaces “South Carolina Department of Health and Environmental Control, Bureau of Water Pollution Control, (Draft) Application for a Land Disposal (No Discharge or ND) Permit”. In addition DHEC requires submittal of an engineering report which would include similar information to the Form 2S.

Quoting further, “EPA is revising these regulations to ensure that permitting authorities obtain the information necessary to issue permits which protect the environment in the most efficient manner. The forms make it easier for permit applicants to provide the necessary information with their applications and minimize the need for additional follow-up requests from permitting authorities. EPA expects the rule to reduce current annual reporting and record keeping burdens by 21 percent, by standardizing the forms to match information requests with information needs.”

(FR 8/4/99, Page 42554) Quoting this FR, this “... action amends the existing regulation regarding the land application, surface disposal, and incineration of sewage sludge. The amendments clarify existing regulatory requirements regarding operational standards for pathogen and vector attraction reduction and provide flexibility to the permitting authority and the regulated community in complying with the minimum frequency of monitoring requirements.... It also amends the existing General Pretreatment Regulation for Existing and New Sources of Pollution by adding a concentration for total chromium in land-applied sewage sludge to the list of pollutants that are eligible for a removal credit issued by a wastewater treatment works treating domestic sewage.”

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(FR 12/8/99): Quoting this FR, these "... regulations (Phase II) expand the existing National Pollutant Discharge Elimination System (NPDES) storm water program (Phase I) to address storm water discharges from small municipal separate storm sewer system (MS4s) (those serving less than 100,000 persons) and construction sites that disturb one to five acres. Although these sources are automatically designated by today's rule, the rule allows for the exclusion of certain sources from the national program based on a demonstration of the lack of impact on water quality, as well as the inclusion of others based on a higher likelihood of localized adverse impact on water quality. Today's regulations also exclude from the NPDES program storm water discharges from industrial facilities that have 'no exposure' of industrial activities or materials to storm water. Finally, today's rule extends from August 7, 2001 until March 10, 2003 the deadline by which certain industrial facilities owned by small MS4s must obtain coverage under an NPDES permit. This rule established a cost-effective, flexible approach for reducing environmental harm by storm water discharges from many point sources of storm water that are currently unregulated.

"EPA believes that the implementation of the six minimum measures identified for small MS4s should significantly reduce pollutants in urban storm water compared to existing levels in a cost-effective manner. Similarly, EPA believes that implementation of Best Management Practices (BMP) controls at small construction sites will also result in a significant reduction in pollutant discharges and an improvement in surface water quality. EPA believes this rule will result in monetized financial, recreation and health benefits, as well as benefits that EPA has been unable to monetize. Expected benefits include reduced scouring and erosion of streambeds, improved aesthetic quality of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, tourism benefits, biodiversity benefits and reduced costs for siting reservoirs. In addition, the costs of industrial storm water controls will decrease due to the exclusion of storm water discharges from facilities where there is 'no exposure' of storm water to industrial activities and materials."

(FR 5/15/00) Quoting this FR, "Today's revision is intended to further (beyond 6/29/95 and earlier promulgations) streamline NPDES ... permitting procedures, by revising requirements to eliminate redundant regulatory language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefit."

DETERMINATION OF COSTS AND BENEFITS:

For the revisions based on FR of 7/17/97, 8/4/99, and 5/15/00, the costs will be minimal or none. Essentially, administrative changes are required.

For the revisions based on the FR of 12/8/99 and related to storm water, there will be sizeable costs. U.S. EPA estimates that compliance with regulation requirements will cost permittees approximately \$9.18 per household per year. In South Carolina, approximately 60 additional entities (counties and municipalities) will require permits and consequent compliance actions under the proposed permit. For an average population of the entities of 30,000, the estimated annual cost for an average entity would be \$90,000, and the annual cost for all entities would be \$5,400,000. In South Carolina, construction costs for sediment and erosion control should not increase significantly. The existing S.C. Standards for Stormwater Management and Sediment Reduction, Regulation 72-300, requires submittals and installation of controls similar to those expected under the proposed regulation. The U.S. EPA estimate of total national costs, including costs for sediment and erosion controls, is from \$850,000,000 to \$980,000,000 per year.

U.S. EPA estimated the national benefits from the water quality improvements expected from the enhanced storm water regulations. The benefits consist of improving the suitability of waters for boating, fishing, and swimming, with estimates of the beneficial value being related to dollar amounts that respondents to a survey would be willing to pay for the improvements. The U.S. EPA estimates showed annual benefits of between \$670,000,000 and \$1,630,000,000. The maximum benefits significantly exceed costs. Further, U.S. EPA states, "There are additional benefits to storm water control that cannot be quantified or monetized." These benefits include "... improved aesthetic quality of waters, benefits to wildlife and threatened and endangered species, cultural values,

and biodiversity benefits.” Further benefits mentioned by U.S. EPA which could not be specifically valued are “... flood control benefits, ... increased property value, ... ecological benefits”

UNCERTAINTIES OF ESTIMATES: The estimates stated by U.S. EPA in the FR show significant variation, both for cost estimates and benefit estimates. Furthermore, preliminary information from cost estimates related to permits issued in South Carolina suggest that U.S. EPA estimates of costs are significantly lower than actual costs.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: Toxicity testing for at least two species is required of publicly owned treatment works (POTW) by the 8/4/99 Federal Register change to Federal regulations. Toxicity testing for a single species has been required of South Carolina POTW since June, 1998, which is before the specific regulation was promulgated. The requirement for testing a second species will involve significant additional testing costs, but no significant change in permits or the environment is expected from that aspect of revisions.

Revisions to storm water regulations for small construction activities (smaller than five acres) are not expected to make a major change in conditions, as present South Carolina regulations require similar controls.

Revisions to storm water regulations for small municipal separate storm sewer systems (MS4) can be expected to lead to significant improvements in water quality near many of the newly-regulated entities.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: Federal regulations require all the actions proposed in these amendments. Therefore, all the actions must be carried out even if the proposed regulation is not implemented. However, there would likely be significant delays in achieving some of the water quality improvements if the proposed regulation is not implemented to provide the authority for the Department of Health and Environmental Control to proceed.

Document No. 2632

DEPARTMENT OF INSURANCE

CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110; 38-9-180; 1-23-10 et seq.

69-58. Privacy of Consumer Financial and Health Information

Synopsis: This regulation relates to the privacy of consumer financial and health information. The regulation will govern the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the state insurance department. The regulation will require a licensee to provide notice to individuals about its privacy policies and practices. It will also describe the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties as well as provide methods for individuals to prevent a licensee from disclosing that information. This regulation will implement the requirements of the Gramm-Leach-Bliley Act and federal regulations on the privacy of consumer information.

Instructions: Add new R.69-58, Privacy of Consumer Financial and Health Information, to Chapter 69 regulations.

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Text:

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Appendix A –Sample Clauses

ARTICLE I. GENERAL PROVISIONS

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections 38-3-110 of the South Carolina Insurance Code and Title V of Pub. Law 102-106, the Gramm-Leach-Bliley Act.

Section 2. Purpose and Scope

A. Purpose.

This regulation governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:

- (1) Requires a licensee to provide notice to individuals about its privacy policies and practices;
- (2) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and
- (3) Provides methods for individuals to prevent a licensee from disclosing that information.

B. Scope.

This regulation applies to:

- (1) Nonpublic personal financial information about individuals who obtain products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and
- (2) All nonpublic personal health information.

C. Compliance.

A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Section 3. Rule of Construction

The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

- A. "Affiliate" means any company that controls, is controlled by or is under common control with another company.

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B. (1) “Clear and conspicuous” means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

- (i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;
- (ii) Uses short explanatory sentences or bullet lists whenever possible;
- (iii) Uses definite, concrete, everyday words and active voice whenever possible;
- (iv) Avoids multiple negatives;
- (v) Avoids legal and highly technical business terminology whenever possible; and
- (vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

- (i) Uses a plain-language heading to call attention to the notice;
- (ii) Uses a typeface and type size that are easy to read;
- (iii) Provides wide margins and ample line spacing;
- (iv) Uses boldface or italics for key words; and
- (v) In a form that combines the licensee’s notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

- (i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- (ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

C. “Collect” means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

D. “Company” means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

E. (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(2) Examples.

(a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if:

(i) (I) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(II) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy;

and

(ii) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this regulation.

(e) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

(i) A participant of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(ii) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee;

(f) (i) The individuals described in Subparagraph (e)(i) through (ii) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).

(ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (ii) above, be deemed to be customers for purposes of this regulation.

(g) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(h) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

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F. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

G. "Control" means:

(1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the director determines.

H. "Customer" means a consumer who has a customer relationship with a licensee.

I. (1) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) Examples.

(a) A consumer has a continuing relationship with a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(i) The consumer applies for insurance but does not purchase the insurance;

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction;

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

(v) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(vi) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

J. "Director" means the director of the South Carolina Department of Insurance.

K. (1) “Financial institution” means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

L. (1) “Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

M. “Health care” means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(a) Relates to the physical, mental or behavioral condition of an individual; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

N. “Health care provider” means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

O. “Health information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of an individual;

(2) The provision of health care to an individual; or

(3) Payment for the provision of health care to an individual.

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P. (1) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state.

(2) (a) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(b) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and

(c) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

(3) (a) Subject to Subparagraph (b), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to Section [insert section] of this state's laws.

(b) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation provided:

(i) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this regulation, except as permitted by Section 15 or 16 of this regulation; and

(ii) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

R. (1) "Nonaffiliated third party" means any person except:

(a) A licensee's affiliate; or

(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

S. “Nonpublic personal information” means nonpublic personal financial information and nonpublic personal health information.

T. (1) “Nonpublic personal financial information” means:

(a) Personally identifiable financial information; and

(b) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) Nonpublic personal financial information does not include:

(a) Health information;

(b) Publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or

(c) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) Examples of lists.

(a) Nonpublic personal financial information includes any list of individuals’ names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals’ names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

U. “Nonpublic personal health information” means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

V. (1) “Personally identifiable financial information” means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(2) Examples.

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(a) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) Account balance information and payment history;

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(vii) Information from a consumer report.

(b) Information not included. Personally identifiable financial information does not include:

(i) Health information;

(ii) A list of names and addresses of customers of an entity that is not a financial institution; and

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

W. (1) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state or local law.

(2) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(a) That the information is of the type that is available to the general public; and

(b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(3) Examples.

(a) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(b) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general

public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(c) Reasonable basis.

(i) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(ii) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

(2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A(2) of this section if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the licensee establishes a customer relationship.

(1) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

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(b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:

(1) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.

E. Exceptions to allow subsequent delivery of notice.

(1) A licensee may provide the initial notice required by Subsection A(1) of this section within a reasonable time after the licensee establishes a customer relationship if:

(a) Establishing the customer relationship is not at the customer's election; or

(b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions.

(a) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(c) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Section 7D, the licensee may deliver its privacy notice according to Section 7D(3).

Section 6. Annual Privacy Notice to Customers Required

A. (1) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

B. (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) Examples.

(a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(c) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(d) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

C. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

Section 7. Information to be Included in Privacy Notices

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

- (1) The categories of nonpublic personal financial information that the licensee collects;
- (2) The categories of nonpublic personal financial information that the licensee discloses;
- (3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;
- (4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

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(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 (and no other exception in Sections 15 and 16 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(6) An explanation of the consumer's right under Section 11A to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

(1) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

- (a) Information from the consumer;
- (b) Information about the consumer's transactions with the licensee or its affiliates;
- (c) Information about the consumer's transactions with nonaffiliated third parties; and
- (d) Information from a consumer reporting agency.

(2) Categories of nonpublic personal financial information a licensee discloses.

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(ii) Transaction information, such as information about balances, payment history and parties to the transaction; and

(iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(a) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A(5) of this section if it:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A(2) of this section, as applicable; and

(b) States whether the third party is:

(i) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) A financial institution with whom the licensee has a joint marketing agreement.

(5) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(8), A(9), and Subsection B of this section.

(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

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D. Short-form initial notice with opt out notice for non-customers.

(1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(2) A short-form initial notice shall:

- (a) Be clear and conspicuous;
- (b) State that the licensee's privacy notice is available upon request; and
- (c) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

- (a) Provides a toll-free telephone number that the consumer may call to request the notice; or
- (b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods

A. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 11A, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

- (a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- (b) That the consumer has the right to opt out of that disclosure; and
- (c) A reasonable means by which the consumer may exercise the opt out right.

(2) Examples.

(a) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 7A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

(ii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(ii) Includes a reply form together with the opt out notice;

(iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(iv) Provides a toll-free telephone number that consumers may call to opt out.

(c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(i) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(ii) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

B. Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

C. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

D. Joint relationships.

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

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(b) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(b) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(c) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) It shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

F. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

G. Duration of consumer's opt out direction.

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

Section 9. Revised Privacy Notices

A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

- (2) The licensee has provided to the consumer a new opt out notice;
- (3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (4) The consumer does not opt out.

B. Examples.

- (1) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:
 - (a) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;
 - (b) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or
 - (c) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.
- (2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

Section 10. Delivery

A. How to provide notices. A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

B. (1) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

- (a) Hand-delivers a printed copy of the notice to the consumer;
- (b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
- (c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;
- (d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

- (a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

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(b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

C. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

D. Oral description of notice insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

E. Retention or accessibility of notices for customers.

(1) For customers only, a licensee shall provide the initial notice required by Section 5A(1), the annual notice required by Section 6A, and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or

(c) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5A, 6A and 9A, respectively, by providing one notice to those consumers jointly.

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

A. (1) Conditions for disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(a) The licensee has provided to the consumer an initial notice as required under Section 5;

(b) The licensee has provided to the consumer an opt out notice as required in Section 8;

(c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(3) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(b) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

B. Application of opt out to all consumers and all nonpublic personal financial information.

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Re-disclosure and Reuse of Nonpublic Personal Financial Information

A. (1) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this regulation, the licensee's disclosure and use of that information is limited as follows:

(a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

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(c) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(2) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B. (1) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this regulation, the licensee may disclose the information only:

(a) To the affiliates of the financial institution from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(2) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(a) The licensee may use that list for its own purposes; and

(b) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this regulation, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this regulation, the third party may disclose the information only:

(1) To the licensee's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 13. Limits on Sharing Account Number Information for Marketing Purposes

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

(1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing

A. General rule.

(1) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with Section 5; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

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(2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- (4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate or acceptable method:
 - (a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - (b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - (d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(f) In connection with:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(ii) The transfer of receivables, accounts or interests therein; or

(iii) The audit of debit, credit or other payment information.

Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Record keeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

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(5) (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7) (a) To comply with federal, state or local laws, rules and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8F.

ARTICLE V. RULES FOR HEALTH INFORMATION

Section 17. When Authorization Required for Disclosure of Nonpublic Personal Health Information

A. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

B. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 18. Authorizations

A. A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:

- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
- (2) A general description of the types of nonpublic personal health information to be disclosed;
- (3) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;
- (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
- (5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

B. An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

C. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article V at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

D. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Section 19. Authorization Request Delivery

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Section 17A.

Section 20. Relationship to Federal Rules

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services 45 CFR Part 160 (the “federal rule”), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this Article V.

Section 21. Relationship to State Laws

Nothing in this article shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

ARTICLE VI. ADDITIONAL PROVISIONS

Section 22. Protection of Fair Credit Reporting Act

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Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of that Act.

Section 23. Violation

Persons violating the provisions of this regulation shall have committed an unfair trade practice and shall be subject to the penalties set forth in Chapter 57 of Title 38.

Section 24. Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 25. Effective Date

A. Effective date. This regulation is effective upon publication of the final regulation in the State Register. In order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of this regulation, the director has extended the time for compliance with this regulation until July 1, 2001. However, with respect to requirements related to the treatment of health information, the compliance deadline has been extended to coincide with the date the privacy regulation adopted by the U.S. Department of Health and Human Services becomes effective.

B. (1) Notice requirement for consumers who are the licensee's customers on the compliance date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

C. Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 14A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and

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- Information we receive from a consumer reporting agency.

A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of Sections 7A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7A(5) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

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- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6–Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)].

A-7–Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Fiscal Impact Statement: A fiscal impact statement is not required as this regulation is exempt from General Assembly review pursuant to S.C. Code Section 1-23-120 (G)(1).