SOUTH CAROLINA STATE REGISTER DISCLAIMER

SOUTH CAROLINA STATE REGISTER

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of the
GENERAL ASSEMBLY

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

South Carolina State Register

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

STYLE AND FORMAT

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

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

2005 PUBLICATION SCHEDULE

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

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

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

REPRODUCING OFFICIAL DOCUMENTS

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

PUBLIC INSPECTION OF DOCUMENTS

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

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

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

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2886		SR29-1	Pilot and Apprentice Age Limitations and Pilot Registration	1/11/05	LLR: Commissioners of Pilotage
2887		SR29-1	Residential Builders Commission	1/11/05	LLR: Residential Builders Commission
2753		SR29-2	LIFE Scholarship Program	1/15/05	Commission on Higher Education
2889		SR29-2	Barrier Free Design, Building Codes Council	1/17/05	LLR: Building Codes Council
2890		SR29-2	Chapter Revisions	1/17/05	LLR: Manufactured Housing Board
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2905		SR29-4	Credit for Reinsurance	3/14/05	Department of Insurance
2900		SR29-4	Student Attendance	3/26/05	Board of Education
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2908		SR29-4	Continuing Insurance Education	4/03/05	Department of Insurance
2906		SR29-4	Repeal Video Poker Regulations	4/03/05	Department of Revenue
2907		SR29-4	ABL - Drive Thru Prohibited	4/03/05	Department of Revenue
2909		SR29-4	Adoption of National Explosives Standards	4/03/05	LLR: Office of State Fire Marshal
2899		SR29-5	Certification Program for Public Librarians	4/10/05	State Library
2903		SR29-5	Total Maximum Daily Loads for Pollutants in Water	4/27/05	Department of Health and Envir Control
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2926		SR29-5	Pasteurized Milk and Milk Products	5/11/05	Department of Health and Envir Control
2933		SR29-5	Wildlife Management Areas	5/11/05	Department of Natural Resources
2918		SR29-5	International Residential Code	5/11/05	LLR: Building Codes Council
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2951		SR29-5	Inactive or Retired Status Licenses	5/11/05	LLR: Long Term Health Care Administrators
2931	R.20	SR29-4	Chapter Revision	5/11/05	LLR: Environmental Certification Board
2901		SR29-6	Child Care Centers Licensing Regulations	5/16/05	Department of Social Services
2940		SR29-6	Personnel Qualifications, Duties and Workloads	5/18/05	Board of Education
2941		SR29-6	Assisting, Developing, and Evaluating Professional Teaching	5/18/05	Board of Education
2949	R.107	SR29-6	Examination of Dentists and Dental Hygienists	5/18/05	LLR: Board of Dentistry
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2925		SR29-6	Licensing Group Child Care Homes	5/19/05	Department of Social Services
2924		SR29-6	Child Care Centers Operated by Churches or Religious Entities	5/19/05	Department of Social Services
2943		SR29-6	Air Pollution Control Regulations and Standards	5/20/05	Department of Health and Envir Control
2944		SR29-6	Infectious Waste Management	5/20/05	Department of Health and Envir Control
2938		SR29-6	Pest Control Regulations	5/26/05	Clemson University, State Crop Pest Comm
2928		SR29-6	Spec Project Stds of Tidelands and Coastal Waters -Docks	5/30/05	Department of Health and Envir Control
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2005-12

WHEREAS, the President of the United States in Homeland Security Presidential Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for federal, state, and local governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity; and

WHEREAS, the collective input and guidance from all federal, state, and local homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS; and

WHEREAS, it is necessary and desirable that all federal, state, and local emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, to facilitate the most efficient and effective incident management, it is critical that federal, state, and local organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident management facilities during emergencies or disasters; and

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will facilitate the state's ability to receive federal funding to enhance local and state agency readiness, maintain first responder safety, and streamline incident management processes; and

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the state, including current emergency management training programs; and the response to all gubernatorial declared emergencies will be in accordance with NIMS standards; and

WHEREAS, pursuant to Public Law Number 108-458 each political entity receiving grant funds from the Department of Homeland Security will comply with all NIMS standards; and

WHEREAS, the National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Laws of the State of South Carolina, I hereby order that the National Incident Management System (NIMS) is adopted as South Carolina's standard for incident management. The South Carolina Emergency Management Division shall review and revise the State Emergency Operations Plan, and recommend revisions to State Regulations 58-1 and 58-101 to insure they are compliant with all applicable NIMS standards.

FURTHER, I order that all emergency response training and exercises shall conform to the standards established by the NIMS. All state and local departments or agencies assigned a primary responsibility for emergency response and planning shall insure that all applicable standard operating procedures conform to NIMS standards.

FURTHER, I order that all state and local departments or agencies assigned a primary or support responsibility in the State Emergency Operations Plan shall participate in scheduled exercises of the South Carolina Emergency Management Division and shall conduct training and certification of personnel essential to the implementation of all assigned emergency functions that comply with NIMS standards.

FURTHER, all local jurisdictions within the state are encouraged to adopt NIMS as their standard for local emergency management and incident response.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3rd DAY OF JUNE, 2005.

MARK SANFORD
Governor

2005-13

WHEREAS, a vacancy exists in the office of Chester County Coroner as a result of the death of Watson Wright; and

WHEREAS, the Governor of the State of South Carolina is authorized to appoint a Coroner in the event of a vacancy pursuant to Sections 17-5-50 and 4-11-20 of the South Carolina Code of Laws, as amended; and

WHEREAS, Terry Dwight Tinker residing at 108 Abell Street, Chester, South Carolina 29706, is a fit and proper person to serve as Chester County Coroner.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Terry Dwight Tinker as Coroner of Chester County until the next general election for this office and until his successor shall qualify. This appointment shall be effective immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 10th DAY OF JUNE, 2005.

MARK SANFORD
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication June 24, 2005, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Barnwell County

Addition of four (4) nursing home beds that will not participate in the Medicaid (Title XIX) Program for a total of forty-four (44) licensed nursing home beds.
Barnwell County Nursing Home
Barnwell, South Carolina
Project cost: $8,000

Affecting Charleston County

Replacement of a single-slice Computed Tomography (CT) scanner at Farmfield Diagnostic Imaging with a six (6) slice CT scanner and the subsequent transfer of the new CT unit to West Ashley Diagnostic Imaging and the relocation of the remaining diagnostic equipment (ultrasound, fluoroscopy/IVP) at Farmfield Diagnostic to West Ashley Diagnostic Imaging and the discontinuance of the single-slice CT at West Ashley Diagnostic Imaging.
West Ashley Diagnostic Imaging, LLC
Charleston, South Carolina
Project Cost: $2,121,515

Affecting Cherokee County

Establishment of a diagnostic cardiac catheterization service by leasing a mobile cardiac catheterization laboratory.
Upstate Carolina Medical Center
Gaffney, South Carolina
Project Cost: $1,300,000

Affecting Georgetown County

Addition of a mobile Positron Emission Tomography/Computerized Tomography (PET/CT) unit to provide service one (1) day per week on the campus of Georgetown Memorial Hospital.
Georgetown Memorial Hospital
Georgetown, South Carolina
Project Cost: $607,081

Affecting Lexington County

Transfer of an existing Special Procedures suite (a Philips Integris V) from the Radiology Department to the Endovascular operating room in the Perioperative Department and the subsequent purchase of a new Philips Allura XPER FD20 to replace the vacated Special Procedures unit in the Radiology Department, with all construction and purchase in conjunction with CONs SC-02-62 and SC-04-42.
Lexington Medical Center
West Columbia, South Carolina
Project Cost: $1,590,153

Affecting Richland County

Upgrade of current Multi-Slice Computerized Tomography (CT) scanner with a Positron Emission/Computerized Tomography (PET/CT) unit.
South Carolina Oncology Associates, P.A.
Columbia, South Carolina
Project Cost: $1,609,703

Affecting Spartanburg County

Addition of one (1) multi-slice Computed Tomography scanner.
Mary Black Memorial Hospital
Spartanburg, South Carolina
Project Cost: $1,764,105

Construction of a forty-eight (48) bed general acute care hospital by transferring forty-eight (48) existing general acute care beds from Spartanburg Regional Medial Center resulting in four hundred eighty-four (484) general acute care beds and fifty-six (56) psychiatric beds remaining at Spartanburg Regional Medical Center.
Spartanburg Regional Healthcare System d/b/a The Village Health Centre
Greer, South Carolina
Project Cost: $51,892,079

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning June 24, 2005. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Barnwell County

Addition of four (4) nursing home beds that will not participate in the Medicaid (Title XIX) Program for a total of forty-four (44) licensed nursing home beds.
Barnwell County Nursing Home
Barnwell, South Carolina
Project Cost: 8,000

Affecting Chesterfield County

Construction to replace one (1) single-slice Computed Tomography (CT) with a multi-slice CT scanner.
Chesterfield General Hospital
Cheraw, South Carolina
Project Cost: $744,879

Affecting York County

Replacement of a Single Slice Computerized Tomography (CT) scanner with a Sixteen (16) Slice Computerized Tomography (CT) scanner.
Piedmont Medical Center
Rock Hill, South Carolina
Project Cost: $1,383,820

Renovations and replacement of equipment for the interventional angiography suite.
Piedmont Medical Center
Rock Hill, South Carolina
Project Cost: $1,632,601

DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 6-9-40 of the 1976 Code of Laws of South Carolina, as amended, the South Carolina Building Codes Council intends to update the National Electrical Code, 2002 Edition to the National Electrical Code, 2005 Edition.

The Council specifically requests comments concerning sections of this edition, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Gary F. Wiggins, Board Administrator, at 110 Centerview Drive, 1st Floor, Columbia, SC, 29211-1329, (803) 896-4620, on or before October 20, 2005.

The South Carolina Building Codes Council will accept comments for 180 days and, if appropriate, convene a study committee pursuant to Section 6-9-40 for the consideration of the comments regarding the 2005 Edition of the National Electrical Code.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. § 59-5-60 (2004), 59-18-710 *et seq.* (2004), Education and Economic Development Act (to be codified at S.C. Code Ann. § 59-59-10 *et seq.*, No Child Left Behind Act of 2001, 20 U.S.C. 7912, Individual with Disabilities Education Act, 20 USC 1400 *et seq.*

Notice of Drafting:

The State Board of Education proposes to amendment R 43-300, Accreditation Criteria. Interested persons may submit comments to Ms. Lucinda Saylor, Deputy Superintendent, Division of Curriculum Services and Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 805, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m., July 27, 2005, the close of the drafting period.

Synopsis:

The proposed amendment will reflect recent changes in state and federal law, for example, the Education Accountability Act (EAA), Education Economic Development Act (EEDA), No Child Left Behind (NCLB), and Individuals with Disabilities Education Act (IDEA).

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. § 59-5-60 (2004), 59-18-710 *et seq.* (2004), Education and Economic Development Act (to be codified at S.C. Code Ann. § 59-59-10 *et seq.*, No Child Left Behind Act of 2001, 20 U.S.C. 7912, Individual with Disabilities Education Act, 20 USC 1400 *et seq.*

Notice of Drafting:

The State Board of Education proposes to amend R 43-231, Defined Program, Grades K–5. Interested persons may submit comments to Ms. Lucinda Saylor, Deputy Superintendent, Division of Curriculum Services and Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 805, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m., July 27, 2005, the close of the drafting period.

Synopsis:

The proposed amendment will reflect recent changes in state and federal law, for example, the Education Accountability Act (EAA), Education Economic Development Act (EEDA), No Child Left Behind Act (NCLB), and Individuals with Disabilities Education Act (IDEA).

Legislative review of this proposal may be required.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-5-60 (2004), 59-18-710 *et seq.* (2004), Education and Economic Development Act (to be codified at S.C. Code Ann. § 59-59-10 *et seq.*, No Child Left Behind Act of 2001, 20 U.S.C. 7912, Individual with Disabilities Education Act, 20 USC 1400 *et seq.*

Notice of Drafting:

The State Board of Education proposes to amend R 43-232, Defined Program, Grades 6–8. Interested persons may submit comments to Ms. Lucinda Saylor, Deputy Superintendent, Division of Curriculum Services and Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 805, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m., July 27, 2005, the close of the drafting period.

Synopsis:

The proposed amendment will reflect recent changes in state and federal law, for example, the Education Accountability Act (EAA), Education Economic Development Act (EEDA), No Child Left Behind Act (NCLB), and Individuals with Disabilities Education Act (IDEA).

Legislative review of this proposal may be required.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-5-60 (2004), Education and Economic Development Act (to be codified at S.C. Code Ann. § 59-59-10 *et seq.*)

Notice of Drafting:

The State Board of Education proposes to repeal Regulation 43-225 and promulgate a new regulation that addresses the Education and Economic Development Act of 2005, which replaces the School-to-Work Act of 1994. Interested persons may submit comments to Dr. James R. Couch, Director, Office of Career and Technology Education, Division of Curriculum Services and Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 912, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 P.M., July 27, 2005, the close of the drafting period.

Synopsis:

The proposed new regulation will address requirements in the Education and Economic Development Act of 2005.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statute Authority: S.C. Code Ann. Section 59-5-60(1) (2004), 59-33-10 *et seq. (2004),* 59-21-510 *et seq.* (2004), 59-21-510 (2004), and Individuals with Disabilities Act, 20 USC 1400 *et seq.*

Notice of Drafting:

The South Carolina State Board of Education proposes to draft substantial revisions and additional regulations governing the education of students with disabilities. Interested persons may submit their comments in writing to Ms. Lucinda Saylor, Deputy Superintendent, Division of Curriculum Services and Assessment, 805 Rutledge Building, 1429 Senate Street, Columbia, South Carolina 29201. To be considered, all comments must be received no later than 5:00 p.m. on July 27, 2005, the close of the drafting comment period.

Synopsis:

The reauthorization of the Individuals with Disabilities Education Act creates the need for amending the state's requirements regarding the provision of a free and appropriate education to students with disabilities.

Legislative review of this proposal will not be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. § 59-5-60(1) (2004), § 59-18-310 (2004), § 59-18-320 (2004), § 59-18-330 (2004), § 59-18-340 (2004), § 59-20-60(7)(c) (2004), §59-30-10 (2004), and 20 U.S.C. § 6301 *et seq.* (2002)

Notice of Drafting:

The State Department of Education proposes to repeal and amend regulations governing the Statewide Assessment Program. Interested persons may submit their comments in writing to Dr. Theresa Siskind, Director, Office of Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 607, Columbia, South Carolina 29204. To be considered, all comments must be received no later than 5:00 p.m. on July 27, 2005.

Synopsis:

The enactment of the Elementary and Secondary Education Act of 2001, Public Law 107-110, also known as No Child Left Behind Act (NCLB), and the South Carolina Education Accountability Act (EAA), creates the need for restructuring the state assessment system. Some areas that will be addressed relate to the Basic Skills Assessment Program (BSAP), High School Assessment Program (HSAP), the Palmetto Achievement Challenge Tests (PACT), the End-of-Course Examination Program (EOCEP), the South Carolina Readiness Assessment (SCRA), the norm-referenced test, and the National Assessment of Educational Progress (NAEP). In addition, the regulation that addresses test security will be addressed.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-5-60 (2004)

Notice of Drafting:

The State Board of Education proposes to repeal R 43-240, Summer School Programs. Interested persons may submit comments to Ms. Lucinda Saylor, Deputy Superintendent, Division of Curriculum Services and Assessment, State Department Education, 1429 Senate Street, Rutledge Building, Room 805, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m., July 27, 2005, the close of the drafting period.

Synopsis:

The proposal repeals R 43-240 by inserting related text regarding summer school programs as amendments to the following regulations: R 43-231, Defined Program, Grades K–5, R 43-232, Defined Program, Grades 6–8, and R 43-234, Defined Program, Grades 9–12.

Legislative review of this proposal may be required.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S. C. Code Ann. Sections(s) 59-5-60(1)(2004), 59-26-10, *et seq.* (2004), and No Child Left Behind Act of 2001, 20 U.S.C. 7912

Notice of Drafting:

The State Department of Education proposes to repeal and amend regulations governing Teacher Quality and School Leadership. Interested persons may submit their comments in writing to Dr. Janice Poda, Deputy Superintendent, Division of Teacher Quality and School Leadership, 3700 Forest Drive, Suite 500, Columbia, South Carolina 29204. To be considered, all comments must be received no later than 5:00 p.m. on July 27, 2005.

Synopsis:

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

Legislative review of this proposal may be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-55-2350 and 48-2-10 et. seq..

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-30, *Environmental Protection Fees*, to revise the fees for the recreational waters program. Interested persons should submit their views in writing to Jeff deBessonet, S.C. Dept. Of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, S.C., 29201. To be considered, comments should be received no later than July 25, 2005, 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,* to change the requirement for collecting the recreational waters program fees currently in budget proviso to regulation. The fees currently assessed by budget proviso will be incorporated into R.61-30.

This amendment will require review by the General Assembly.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-56-30

R.61-79 HAZARDOUS WASTE MANAGEMENT REGULATIONS

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-79, Hazardous Waste Management Regulations, to adopt federal amendments through October 25, 2004, including the Performance Track Rule. Amendments to the Environmental Protection Agency Performance Track Rule will also require participation in the South Carolina Environmental Excellence Program. Interested persons are invited to present their views in writing to John Litton, Director of the Division of Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by close of business July 25, 2005.

Synopsis:

This Notice of Drafting supercedes the Notice of Drafting published December 24, 2004.

The United States Environmental Protection Agency (USEPA) promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments affect an exclusion at 261 Appendix IX of six wastewater treatment plant sludges at six automobile assembly plants in Michigan, national emission standards for air pollutants for certain vehicle surface coating operations, and other NESHAP-related amendments. The Department intends to adopt the National Environmental Performance Track Program with an addition to 262.34 "Accumulation Time" and new language at (j) and (k) and (l) to provide for flexibility regarding storage time in certain cases without requiring a storage permit. Amendments to the Performance Track Program will require participation in the South Carolina Environmental Excellence Program. Clarification will be made at 261.5(j) to reflect federal clarifying amendments addressing recycled used oil. These rules have been published in the Federal Register between July 1, 2003, and October 25, 2004. Finally, the Department intends to remove the text in 266 Subpart E, replace the text with only a reference to R.61-

107.279, and replace all cross references to 266 Subpart E with references to R.61-107.279, to reflect federal language in 40 CFR 266.

The Department intends to amend R.61-79 to maintain conformity with federal requirements and ensure compliance with federal standards. Legislative review of this amendment will be required because the State intends to incorporate the South Carolina Environmental Excellence Program in R.61-79. Inclusion of the South Carolina Environmental Excellence Program is optional because it does not reflect federal minimum requirements, however the rule as proposed allows regulated parties participating in the South Carolina Environmental Excellence Program flexibility regarding hazardous waste storage times and is less stringent than current State regulations.

Document No. 2982
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF LABOR SERVICES
CHAPTER 71
Statutory Authority: 1976 Code Section 41-13-20.

Preamble:

The Office of Labor Services is proposing to amend Regulations 71-3106 and 71-3107 regarding guidelines for child labor.

Section by Section Discussion:

The following is a section by section discussion of the amendments proposed by the Office of Labor Services:

Regulation 71-3106. Employment of Minors Between 14 and 16 Years of Age.

(c)(7). Adds examples of types of kitchen work permitted for minors fourteen and fifteen years of age.

(d)(10). Allows more exceptions to the prohibition against cooking by minors fourteen and fifteen years of age.

Regulation 71-3107. List of Hazardous Occupations or Occupations Detrimental to Health of Minor; Exemptions.

(B)3.(b). Further defines the terms "explosives" and "articles containing explosive components."

(C)(2)(i). Adds more criteria to be met to qualify seventeen-year-olds to engage in incidental and occasional driving.

(C)(3). Adds definitions for "occasional and incidental" and "urgent, time-sensitive deliveries" in determining whether the incidental and occasional driving exemption applies.

(J)(1)(i). Adds to the list of particularly hazardous power-driven paper-products machines.

(J)(3). Adds definitions and further defines existing terms: "applicable ANSI standard," "operating or assisting to operate," "paper box compactor," "paper-products machine," and "scrap paper baler."

(J)(4). Adds exemptions to which the particularly hazardous section regarding power-driven paper-products machines will not apply.

(N)(1). Extends the particularly hazardous occupations regarding roofing to include all occupations on or about a roof.

(N)(2). Adds a definition for "on or about a roof" and further defines "roofing operations."

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws of South Carolina, as amended, such hearing will be conducted at the Administrative Law Court at 10:00 a.m. on Tuesday, August 9, 2005. Written comments may be directed to Mark Dorman, Administrator, Office of Wages and Child Labor, Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m., Tuesday, July 26, 2005.

Preliminary Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivision.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: To amend the regulations governing child labor to conform to current federal regulations and to recognize the concurrent jurisdiction of federal and state over child labor.

Legal Authority: Statutory Authority: 1976 Code Section 41-13-20

Plan for Implementation: Administratively, the Board will see that these provisions are implemented by informing the applicants through written and oral communications. Because the proposed state regulations will mirror the current federal regulations, many employers will also receive written and oral communications from trade associations and employer groups teaching updates on the federal regulations.

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

This regulation needs to be amended in order to ease compliance with applicable federal laws and regulations. Because many employers in South Carolina are subject to regulation of child labor by both State and Federal agencies, it is important to minimize any conflicts between the two sets of regulation.

DETERMINATION OF COSTS AND BENEFITS:

There will be no additional cost incurred by the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

This regulation will have no effect on the environment or the public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NO IMPLEMENTED:

There will be no detrimental effect on the environment and public health of this State if the regulations are not implemented in this State.

Statement of Rationale:

The state regulations for child labor are amended to conform with federal regulations as directed by 1976 Code Section 40-13-20.

Text:

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

Document No. 2959
BUDGET AND CONTROL BOARD
CHAPTER 19

Statutory Authority: S.C. Code Sections 44-6-170, 44-6-175, 44-6-200

19-8 Data Reporting Requirements Pertaining to South Carolina Hospitals
19-10 Data Reporting Requirements Pertaining to Submission of Ambulatory Encounter Data
19-11 Data Release for Medical Encounter Data & Financial Reports

Synopsis:

These regulations provide for establishing procedures and standards for reporting health care data from South Carolina hospitals, ambulatory surgery centers, home health agencies, imaging centers and other outpatient services requiring a Certificate of Need and the procedures for releasing these data through the Data Oversight Council.

Regulation 19.8 These regulations addresses the structure and identifies the data elements required to be reported for both financial and encounter data by hospitals.

Section 19-800. Definitions address the definitions used in the regulations.

Section 19-801. Financial and Utilization Data addresses the financial data elements required to be reported by hospitals annually including a copy of the healthcare facilities Medicare Cost Report.

Section 19-810. Medical Record Extract Information addresses the data elements to be reported using *The Principles and Protocol for the Release of Health Care Data*, the electronic submission of data to the Office of Research and Statistics, establishes completeness, accuracy and timeliness criteria for data reporting, and a procedure for changing health care submissions to the Office of Research and Statistics.

Section 19-820. Penalties for Failure to Meet Requirements establishes the process and penalties that may be assessed if a healthcare facility fails to meet the reporting requirements of these regulations.

Regulation 19-10 These regulations addresses the structure for the reporting of ambulatory data by hospitals, home health agencies, ambulatory surgery centers, operators of imaging equipment requiring a Certificate of Need and other services/equipment that require a Certificate of Need.

Section 19-1001. Definitions address the definitions used in these regulations.

Section 19-1010. Health Care Providers Required to Report Ambulatory Encounter Level Data to the Office of Research and Statistics addresses the health care facilities that must report under these regulations.

Section 19-1020. Medical Record Extract Information addresses the data elements to be reported using *The Principles and Protocol for the Release of Health Care Data,* the electronic submission of data to the Office of Research and Statistics, and a procedure for changing health care submission to the Office of Research and Statistics.

Section 19-1030. Criteria for Data Submission Timeliness and Items Completeness and Accuracy establishes the criteria for the completeness, accuracy and timeliness of data reported.

Section 19-1040. Penalties for Failure to Meet Timeliness, Completion and Accuracy Requirements establishes the process and penalties that may be assessed if a healthcare facility fails to meet the reporting requirements of these regulations.

Section 19-1050. Criteria for Release of Ambulatory Encounter Data address addresses how these data will be released.

Section 19-1060. Confidentiality of Patient and Health Care Identifiers addresses the confidentiality policies and procedures provided for the protections of patients, health care facilities, health care providers and insurers.

Regulation 19-11 These regulations establish the mechanism for the release of health care encounter data.

19-1101. Definitions address the definitions used in the regulations.

19-1110. Data Oversight Council Authority address the authority of the Data Oversight Council to establish the Data Release Protocol using The *Principles and Protocol for the Release of Health Care Data,* establish the electronic format for data submission and addresses the confidentiality of patient, health care facilities, providers and insurers.

19-1120. Classification of Data Elements address the process used to classify data to provide for the confidentiality of patients, health care facilities, providers and insurers.

19-1130. Data Release Protocol address the process to be used to adopt the *Principles and Protocol for the Release of Health Care Data,* addresses confidentiality of the data, requirement for use of a confidentiality contract where data has been approved for release and requirements for review and amendment of public reports.

Instructions:

Replace R.19-8 Data Reporting Requirements Pertaining to South Carolina Hospitals, 19-10 Data Reporting Requirements Pertaining to Submission of Ambulatory Encounter Data, 19-11 Data Release for Medical Encounter Data & Financial Reports

The following regulations will amend and replace in its entirety Regulation 19-8, Regulation 19-10 and Regulation 19-11 to comply with Federal law.

Text:

R. 19-8 Data Reporting Requirements Pertaining to South Carolina Hospitals

Table of Contents:

19-800 Definitions
19-801. Financial and Utilization Data
19-810 Criteria for Data Submission
19-820. Penalties for Failure to Meet Requirements

DATA REPORTING REQUIREMENTS PERTAINING TO SOUTH CAROLINA HOSPITALS
(Statutory Authority: 1976 Code Sections 44-6-170, 44-6-175 and 44-6-200, as amended)

19-800**.** Definitions. [SC ADC 19-800]

Hospitals: is as defined in South Carolina State Certification of Need and Health Facility Licensure Act, Section 44-7-130.

Calendar quarter: is defined as any one of the following: January through March, April through June, July through September, and October through December.

Discharged Patient: is any patient admitted to a hospital for inpatient services or any maternal delivery or newborn service.

19-801. Financial and Utilization Data (Annual). [SC ADC 19-801]

A. All required items shall be reported to the Office of Research and Statistics, South Carolina Budget and Control Board, for the period October first through September thirtieth by March first of the following year.

B. The formats for submission of the required items are:

(1) "Annual Hospital Financial Data Report" or other format as specified by the Office of Research and Statistics for financial items;

(2) "Joint Annual Report of Hospitals" or other format as specified by the Office of Research and Statistics for utilization items.

C. When a format other than the Annual Report in B(1) or B(2) above is specified, the Office of Research and Statistics shall provide the format to hospitals thirty days prior to implementation of that format.

D. Financial data elements pertaining to patient charges shall be reported for "inpatients only" and for "all patients, inpatients and outpatient."

E. The financial and utilization data elements to be collected are:

(1) Gross patient revenue;

(2) Gross revenue from Medicare;

(3) Gross revenue from Medicaid;

(4) Gross revenue from Medically Indigent Assistant Program;

(5) Government contractual adjustments for:

(a) Medicare;

(b) Medicaid;

(c) Medically Indigent Assistant Program;

(d) TriCare; and

(e) Other Contractual Allowances;

(6) Total direct costs of medical education:

(a) Reimbursed, and

(b) Unreimbursed;

(7) Total indirect costs of medical education:

(a) Reimbursed, and

(b) Unreimbursed;

(8) Total costs of care for medically indigent:

(a) Reimbursed, and

(b) Unreimbursed;

(9) Bad debt expenses, net of recovery;

(10) Total patient days;

(11) Average length of stay;

(12) Total outpatient visits.

F. Hospitals shall submit to the Office of Research and Statistics a copy of their "Medicare Cost Reports" in accordance with the submission requirements of the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services.

G. Hospitals shall maintain documentation to substantiate all items governed by R.19.801 for a period of three years from the March first deadline date.

19-810. Medical Record Extract Information. [SC ADC 19-810]

A. The data elements will be specified by the Data Oversight Council through *Principles and Protocol for the Release of Health Care Data. The Principles and Protocol for the Release of Health Care Data* shall allow for review and input by interested parties on the data elements to be reported taking into consideration all applicable federal, state laws and regulations. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

B. Patient records submitted shall be in accordance with, but not limited to the specifications, promulgated by the Secretary of the Department of Health and Human Services for the United States of America in accordance with the authority to designate health care codes and transactions under the Health Insurance Portability and Accountability Law of 1996, as well as under the specifications of the Director of the Centers for Medicare and Medicaid Services and as specified in the Medically Indigent Assistance Act for the State of South Carolina.

C. Records shall be submitted directly to the Office of Research and Statistics on magnetic media or via some other system made available by the Office of Research and Statistics in a format to be specified by the Office of Research and Statistics and provided to hospitals one hundred twenty days prior to implementation of that format.

D. One record for each inpatient discharged during the calendar quarter (including newborns) shall be submitted. Hospitals shall submit at least ninety percent of their quarterly discharge records within forty-five days after the close of the quarter with exception made for conditions beyond the hospital's control. Hospitals shall submit one hundred percent of their discharge records within one hundred twenty days after the date of discharge with exception made for conditions beyond the hospital's control.

E. Reporting of required items shall meet ninety-nine percent item completeness.

F. Completed items shall meet ninety-nine and five tenths percent accuracy as determined by edit specifications set by the Office of Research and Statistics.

G. Hospitals changing hardware/software or processors, which would necessitate a change in tape submission procedure, shall:

(1) Notify the Office of Research and Statistics in writing at least sixty days prior to change and submit a test tape meeting completeness and accuracy requirements within one hundred twenty days after the change is accomplished; and

(2) Make provisions for continued reporting of data during change/test period so that data submission complies with R.19.810C.

H. To insure complete reporting, each hospital shall submit quarterly, in writing, to the Office of Research and Statistics within forty-five days of the close of the quarter, a report of the number of inpatients discharged during the quarter (including newborns) and the number of inpatient days corresponding to those discharges. The hospital shall report using a format specified by the Office of Research and Statistics and provided to hospitals thirty days prior to implementation of the format.

I. The hospital's designee shall have access to the hospital's data elements in section R.19.810A.

19-820. Penalties for Failure to Meet Requirements. [SC ADC 19-820]

A. Pursuant to South Carolina Code Section 44-6-170G, the Office may assess a civil fine for failure to comply with these regulations.

B. Failure to provide one record for each discharge (including newborns) according to R.19.810D or meet quality and item-completeness standards set forth in R.19.810E and R.19.910F.

(1) First occurrence: the Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The hospital Chief Executive Officer shall reply in writing as to the reasons for non-compliance and provide a summary of measures implemented to insure future compliance. Full compliance shall occur within two subsequent quarterly submissions;

(2) Subsequent occurrences: Fines may be followed as in subsection C.(2) below.

C. Failure to meet time frames for submission of required medical record extract information and supporting summary utilization data according to R.19.810D and R.19-810H or required financial and utilization items according to R.19.801A.

(1) The Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The hospital shall be granted a two week grace period beginning on the date of the receipt of the letter.

(2) If the hospital fails to comply within the grace period:

(a) The Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The Chief Executive Officer shall respond in writing to the Office of Research and Statistics within one week of date of receipt as to reasons for non-compliance.

(b) The Office of Research and Statistics may extend the grace period if it deems it warranted (as demonstrated by a good faith effort on the part of the hospital to comply) and shall notify the Chief Executive Officer in writing.

(c) Hospitals failing to comply within the grace period(s) may be fined as follows and the total fine may not exceed ten thousand dollars:

(i) First Occurrence $ 100

(ii) Second Occurrence $1,000

(iii) Third Occurrence $5,000

(d) A six-month grace period from the date these regulations become effective shall be granted by the Office of Research and Statistics before R.19.820 is enforced.

(e) The fines as levied as in C(2)(c) above shall be reset to "first occurrence" levels beginning three years from the date of first occurrence or upon change of ownership of the hospital or upon change of the hospital's Chief Executive Officer.

D. The proposed penalties become the final agency decision within ten days after the certified letter to the administrator unless the Chief Executive Officer requests a reconsideration of the penalty in writing within the ten day grace period from the Executive Director of the Budget and Control Board or his/her designee. When such a request is submitted:

(1) The burden of proof for contested penalties will be upon the hospital; and

(2) The Executive Director of the Budget and Control Board or his/her designee must respond by certified letter to the Chief Executive Officer's request within thirty days from the receipt of the request.

R. 19-10 Data Reporting Requirements Pertaining to Submission of Ambulatory Encounter Data

Table of Contents:

19-1001 Definitions
19-1010 Health Care Providers Required to Report Ambulatory Encounter Level Data
19-1020 Medical Record Extract Information
19-1030 Criteria for Data Submission Timeliness and Items Completeness and Accuracy
19-1040 Penalties for Failure to Meet Timeliness, Completion and Accuracy Requirements
19-1050 Criteria for Release of Ambulatory Encounter Data
19-1060 Confidentiality of Patient and Health Care Identifiers

DATA REPORTING REQUIREMENTS PERTAINING TO SUBMISSION OF AMBULATORY ENCOUNTER DATA

(Statutory Authority: 1976 Code Section 44-6-170)

19-1001. Definitions. [SC ADC 19-1001]

Data Elements: refers to any specific characteristic, usually encoded, describing a patient, the services provided to a patient, the health care facility, and/or the professional rending the services, during a medical encounter.

Outpatient: refers to any person receiving care in a health care setting that does not require admission to a hospital. This definition includes observation patients.

Ambulatory Encounter Level Data: refers to data gathered or organized by each episode of medical care provided to an outpatient in a health care setting.

Health Care Setting: includes but is not limited to hospitals, ambulatory surgical facilities, home health agencies and providers of the following ambulatory services: radiation therapy, cardiac catheterization, lithotripsy, magnetic resonance imaging and positron emission therapy and other providers offering services with equipment requiring a Certificate of Need.

19-1010. Health Care Providers required to Report Ambulatory Encounter Level Data to the Office of Research and Statistics. [SC ADC 19-1010]

A. Hospital based and freestanding Ambulatory Surgical Facilities as defined by the State Certificate of Need and Health Facility Licensure Act, Section 44-7-130.

B. Hospital Emergency Department included in a licensed facility under the State Certification of Need and Health Facility Licensure Act, Section 44-7-130.

C. Hospitals providing observation services for outpatients.

D. Any health care setting providing on an outpatient basis the following services: radiation therapy, cardiac catheterizations, lithotripsy, magnetic resonance imaging and positron emission therapy. Additionally, any other provider offering services with equipment requiring a Certificate of Need is required to report to the Office of Research and Statistics.

E. Home health agencies licensed under the "Licensure of Home Health Agencies Act."

19-1020. Medical Record Extract Information. [SC ADC 19-1020]

A. Ambulatory encounter level data for all outpatients shall be coded in accordance with**,** but not limited to, the specifications promulgated Secretary of the Department of Health and Human Services for the United States of America in accordance with the authority to designate health care codes and transactions under the Health Insurance Accountability and Portability Law of 1996 (HIPAA), as well as under the specifications of the Director of the Centers for Medicare and Medicaid Services and as specified in Medically Indigent Assistance Act for the State of South Carolina.

B. Data elements to be reported will be specified by the Data Oversight Council through *Principles and Protocol for the Release of Health Care Data.* The *Principles and Protocol for the Release of Health Care Data's* process for identifying data elements to be reported will include means for review and input by interested parties taking into consideration all applicable federal and state laws and regulations. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

C. Ambulatory encounter level data for all outpatients shall be submitted directly to the Office of Research and Statistics and provided to health care providers one hundred twenty days prior to implementation of that format.

19-1030. Criteria for Data Submission Timeliness and Items Completeness and Accuracy. [SC ADC 19-1030]

A. One record for each outpatient ambulatory encounter during the calendar quarter shall be submitted. Health care providers covered by these regulations shall submit at least ninety percent of their quarterly ambulatory patient encounter records within forty-five days after the close of the quarter with exception made for conditions beyond the health care provider's control. Health care providers covered by these regulations shall submit one hundred percent of their patient encounter records within one hundred thirty-five days after the quarter in which the service was rendered with exception made for conditions beyond the health care

provider's control.

B. Reporting of required items shall meet ninety-nine percent item completeness.

C. Completed items shall meet ninety-nine and five-tenths percent accuracy as determined by edit specifications set by the Office of Research and Statistics.

D. Health care providers covered by these regulations changing hardware/software or processors which would necessitate a change in submission procedure shall:

(1) Notify the Office of Research and Statistics in writing at least sixty days prior to change and submit a test tape meeting completeness and accuracy requirements within one hundred twenty days after the change is accomplished,

(2) Make provisions for continued reporting of data during change/test period so that data submission complies with these regulations.

E. To insure complete reporting, each health care provider covered by these regulations shall submit quarterly, in writing, to the Office of Research and Statistics within forty-five days of the close of the quarter, a report of the number of patient encounters during the quarter. The health care providers covered by these regulations shall report this information in a format specified by the Office of Research and Statistics and provided to health care providers thirty days prior to implementation of the format.

F. The Office of Research and Statistics will work with individual health care providers to incorporate the inclusion of data elements that are not currently coded into a standard data format during the modification period. The modification period will be for one year from the beginning submission date. See Section 19.1020. The modification period may be extended by Office of Research and Statistics based on changing federal reporting requirements.

19-1040. Penalties for Failure to Meet Timeliness, Completion and Accuracy Requirements. [SC ADC 19-1040]

A. Pursuant to South Carolina Code Section 44-6-170 G, the Office may assess a civil fine for failure to comply with these regulations.

B. Failure to provide one record for each patient encounter according to these regulations or meet accuracy and item-completeness standards set forth in these regulations:

(1) First occurrence: The Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider covered by these regulations shall reply in writing as to the reasons for non-compliance and provide a summary of measures implemented to insure future compliance. Full compliance shall occur within two subsequent quarterly submissions;

(2) Subsequent occurrences: fines may be followed as in subsection C (2) below.

C. Failure to meet time frames for submission of required medical record extract information:

(1) The Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall be granted a two-week grace period beginning on the date of the receipt of the letter.

(2) If the health care provider fails to comply within the grace period:

(a) The Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall respond in writing to the Office of Research and Statistics within one week of date of receipt as to reasons for non-compliance.

(b) The Office of Research and Statistics may extend the grace period if it deems it warranted (as demonstrated by a good faith effort on the part of the health care provider), and shall notify the health care provider in writing.

(c) Health care providers covered by these regulations failing to comply within the grace period(s) may be fined as follows and the total fine may not exceed ten thousand dollars:

(i) First occurrence $ 100

(ii) Second occurrence $1,000

(iii) Third occurrence $5,000

A six-month grace period from the date these regulations become effective shall be granted by the Office of Research and Statistics before these regulations are enforced.

The fines as levied in C (2)(c) above shall be reset to "first occurrence" levels beginning three years from the date of first occurrence, or upon change of ownership of the health care provider, or upon change of the chief executive officer.

D. The proposed penalties become the final agency decision within ten days after the certified letter to the administrator unless the health care provider requests a reconsideration of the penalty in writing within the ten day grace period from the Executive Director of the Budget and Control Board or his/her designee. When such a request is submitted:

(1) The burden of proof for contested penalties will be upon the health care provider; and

(2) The Executive Director of the Budget and Control Board or his/her designee must respond by certified letter to the health care provider's request within thirty days from the receipt of the request.

19-1050. Criteria for the Release of Ambulatory Encounter Level Data. [SC ADC 19-1050]

The data collected under these regulations are subject to Final Regulations State Budget and Control Board Chapter 19, Statutory Authority: 1976 Code Section 44-6-170, Article 11, "Data Release For Medical Ambulatory Encounter Date & Financial Reports" providing for the release of medical encounter data.

19-1060. Confidentiality of Patient and Health Care Provider Identities. [SC ADC 19-1060]

A. The data collected under these regulations are subject to the confidentiality provisions of Section 44-6-170, as amended, Code of Laws of South Carolina, 1976, and in Final Regulations, State Budget and Control Board, Chapter 19, Statutory Authority: 1976 Code Section 44-6-170, Article 11, "Data Release For Medical Encounter Data & Financial Reports."

B. Failure to comply with confidentiality provisions in these regulations can result in legal action as specified in Section 44-6-180, as amended, Code of Laws of South Carolina, 1976.

R. 19-11 Data Release for Medical Encounter Data & Financial Reports

Table of Contents:
19-1101. Definitions
19-1110. Data Oversight Council Authority
19-1120. Classification of Data Elements
19-1130. Data Release Protocol

ARTICLE 11

DATA RELEASE FOR MEDICAL ENCOUNTER DATA & FINANCIAL REPORTS

(Statutory Authority: 1976 Code Section 44-6-170)

19-1101. Definitions. [SC ADC 19-1101]

Data Element: refers to any specific characteristic, usually encoded, describing a patient, the services provided to a patient or the health care facility, and/or the professional providing the services, during a medical encounter.

Encounter Level Data: refers to data gathered or organized by each contact between a patient and a health care professional in which care was given.

Health Care Facility: includes but is not limited to acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers, including freestanding hemodialysis centers, ambulatory surgical facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habitation centers for mentally retarded persons or persons with related conditions, and any other freestanding facility offering services or special equipment for which Certificate of Need review is required by state law. For the purposes of this document, Home Health Agencies are included as defined by "Licensure of Home Health Agencies Act," as a public, nonprofit or proprietary organization, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

Health Care Facility Identifiers: the name, address, and/or identification number of a health care facility.

Health Care Insurer: includes but is not limited to domestic and foreign insurers providing accident and health insurance as defined by 38-1-20 of South Carolina Codes of laws, excluding federal and state insurers fund through public funds, including but not limited to, Medicare and Medicaid.

Health Care Insurer Identifiers: the name, address, and/or identification number of a health care insurer.

Health Care Professional: includes but is not limited to physician, physicians assistant, dentist, dental hygienist, dental technician, pharmacist, physical therapist, physical therapists assistant, optometrist, psychologist, respiratory care practitioner, registered nurse, licensed practical nurse, podiatrist, occupational therapist or other health care professional registered or licensed and practicing in South Carolina.

Health Care Professional Identifiers: the name, address, and/or identification number of a health care professional.

Research: means a planned and systematic sociological, psychological, epidemiological, biomedical, economic or other scientific investigations carried out by a government agency, by a scientific research professional associated with a bona fide scientific research organization, by a graduate student currently enrolled in an advanced academic degree curriculum, or other organizations with bona fide research capabilities with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collections that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

19-1110. Data Oversight Council Authority. [SC ADC 19-1110]

A. The Data Oversight Council (DOC) shall classify data elements received by the Office of Research and Statistics (ORS) from health care facilities and/or professionals. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

B. The DOC shall establish the Data Release Protocol and make final decisions concerning the release of these data. The *Principles and Protocol for the Release of Health Care Data's* process for identifying data elements to be reported will include means for review and input by interested parties taking into consideration all applicable federal and state laws and regulations.

C. The DOC shall determine reports and electronic formats of data to be released for public use.

D. The DOC shall review and approve procedures for the ORS to use in protecting the confidentiality of the patient, health care facility, health care professional, and health insurers, excluding Medicare, Medicaid and any other governmental health insurers.

19-1120. Classification of Data Elements. [SC ADC 19-1120]

A. The data elements are classified into four categories: encounter-level, restricted, confidential, and never releasable. These categories are defined as:

(1) Encounter-level data are those data elements that are available for general public use.

(2) Restricted data are those data elements that require approval for release through the Data Release Protocol.

(3) Confidential data elements are those that shall be released only if a mandate has been established by statutory law.

(4) Never releasable data elements are those that may be used for statistical linking purposes only.

B. Until data elements are classified, they shall be considered restricted data and shall be subject to the Data Release Protocol.

C. To insure the confidentiality of patients, health care facilities, health care insurer and/or health care professionals certain data elements shall be classified by these regulations as Restricted, Confidential, or Never Releasable data elements. Restricted data elements include, but are not limited to, health care facility identifiers, health care professional identifiers, health care insurer identifiers, patient medical record number or chart number, and unique patient number. Confidential data elements include, but are not limited to, patient name and address (excluding all Mental Health and Alcohol and other Drug Abuse encounters). Never releasable data elements include, but are not limited to, patient social security number (for all encounters), patient name and address for all Mental Health and Alcohol and other Drug Abuse encounters as required by federal law, and any other patient identifying information protected from release by federal law. All identifiers may be released back to the entity providing the data or controlling the enumeration of the data.

19-1130. Data Release Protocol. [SC ADC 19-1130]

A. The confidentiality of the patient shall be of the utmost concern. The release or re-release of data, in raw or aggregate form, that can be reasonably expected to reveal the identity of an individual patient shall be made only when a mandate has been established by statutory law.

B. Requests for the release of encounter-level and/or restricted data elements for research purposes shall be subject to the Data Oversight Council's Data Release Protocol.

C. The release of encounter-level**,** restricted and/or confidential data elements require that a confidentiality contract be signed by the appropriate individuals as specified in the *Principles and Protocol for the Release of Health Care Data* for each classification of data.

(1) These Confidentiality Contracts shall protect the confidentiality of the patient, health care facility, health care provider and health insurer and shall be specified in the *Principles and Protocol for the Release of Health Care Data* by the Data Oversight Council.

(2) These data are the property of the ORS and must be surrendered upon direction of the DOC.

(3) Failure to comply with the Confidentiality Contract may result in legal action. A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

D. The DOC shall review requests for the release of encounter-level**,** restricted and/or confidential data for non-research purposes and make a final determination about the release of data.

E. Reports to be released for public use must follow the procedures and formats published in *The Principles and Protocol for the Release of Health Care Data*: *The Principles and Protocol for the Release of Health Care Data* shall allow for review and input by affected parties on the reports to be released for public use, taking into consideration all applicable federal, state laws and regulations.

Fiscal Impact Statement:

The South Carolina Budget and Control Board, Office of Research and Statistics estimates that no additional financial impact by the State and its political subdivisions in complying with the proposed regulations.

Statement of Rationale:

This statement of rationale was determined by staff analysis pursuant to S.C. Code Ann. § 1-23-115 (Supp. 2003). No studies or reports were relied upon for this proposal, rather it is in response to and an effort to coordinate with adoption of federal laws regarding electronic billing of health care data, privacy and security of health care data and providing a process that allows for the updating of these requirements.

Document No. 2939
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27
Statutory Authority: 1976 Code Sections 46-9-40

27-135 Designation of Plant Pests

Synopsis: This amendment adds a number of organisms to the list of designated plant pests.

Instructions: Add the additional organisms to the list of designated plant pests found in subparagraph 2, in proper alphabetical order.

Text:

27-135 Designation of Plant Pests

1. No change
2. The following is added to the list of plant pests:

Scientific Name	Common Name
Achatina fulica	Giant African snail
Adelges tsugae	hemlock wooly adelgid
Agrilus planipennis	Emerald ash borer
Anoplophora malasiaca	Longhorn beetle
Anthonomus grandis	Boll weevil
Apis mellifera scutellata	Africanized honeybee
Aphis glycines	Soybean aphid
Apple proliferation phytoplasma	
Autographa gamma	Silver Y Moth
Cactoblastis cactorum	Cactus moth
Cryptophlebia leucotreta	False Codling Moth
Curculio elephas	European Chestnut Weevil
Cydia funebrana	Plum Fruit Moth
Cylas formicarius elegantulus Summers	Sweet potato weevil
Cylas formicarius Fabricius	Sweet potato weevil
Elsinoe australis	Sweet Orange Scab
Epiphyas postvittana	Lt. Brown Apple Moth
Globodera rostochiensis	Golden Nematode
Guignardia citricarpa	Citrus Black Spot
Halyomorpha halys	Brown marmorated stink bug
Helicoverpa armigera	Old World Bollworm
Helix aspersa Muller	Brown garden snail
Inula brittanica	British yellowhead
Lobesia botrana	European Grape Vine Moth
Megalobulimus oblongus Muller	Giant South American snail
Myllocerus undecimpustulatus	Exotic weevil
Parlatoria ziziphi	Black Parlatoria Scale
Peronosclerospora philippinesis	Philippine downy mildew
Phakorpsora pachyrhizi	Soybean Rust
Phytophthora ramorum	Sudden oak death, Ramorum canker
Plum pox potyvirus (PPV)	Plum pox virus
Pomacea canaliculata	Channeled Apple Snail
Ralstonia solancearum race 3 biovar 2	
Solenopsis richteri Forel	Black imported fire ant
Soybean dwarf luteovirus (SbDV)	
Spodoptera littoralis	Egyptian Cottonworm
Spodoptera litura	Cotton Leafworm
Synchytrium endobioticum	Potato wart
Tilletia indica	Karnal bunt
Theba pisana Muller	White garden snail
Tomato black ring nepovirus (TBRV)	
Tomato yellow leaf curl bigeminivirus (TYLCV)	Tomato leaf curl virus
Trogoderma granarium	Khapra beetle
Unaspis yanonensis	Arrowhead Scale
Xanthomonas oryzae pv. oryzicola	Bacterial leaf streak

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

Statement of Rationale: This amendment does not constitute a significant amendment to an existing regulation and consequently no detailed statement of rationale is required.

Document No. 2938
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27
Statutory Authority: 1976 Code Sections 46-9-40; 46-13-30; 46-13-55

Article 17

Synopsis: This amendment rewrites the South Carolina Pest Control Regulations.

Instructions: Replace paragraphs 27-1070 through 27-1085 with the new regulations found below.

Text:

27-1070. Definitions.

A. "Director" means the Director of the Division of Regulatory and Public Service Programs, Clemson University.

B. "Department" is the Department of Pesticide Regulation, a department within the Division of Regulatory and Public Service Programs, Clemson University, and the successor to the Department of Fertilizer and Pesticide Control and the Plant Pest Regulatory Service.

C. "Business" means any person, as defined in the Pesticide Control Act, engaging in activities regulated by the Act for hire or remuneration of any kind, including trade or barter, on the property of another. "Business activity" includes performing structural pest control activities, as defined below.

D. Performing "structural pest control activities" includes, but is not limited to, the use of any pesticide in, on, under, or immediately adjacent to any structure with the intent to prevent, destroy, repel or otherwise mitigate any pest or engaging in any other activities intended or claimed to mitigate pests in structures including the installation of devices. Structural pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides in, on, under, or immediately adjacent to any structure with the intent to prevent, destroy, repel, or otherwise mitigate any pest. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

(1) The use of EPA-registered disinfectants for ordinary or disaster-recovery cleaning purposes is not a structural pest control activity, provided that no claims are made for the control of pests in the structure.

(2) The application of EPA-registered cleaning agents to the interior of ductwork as part of an ordinary cleaning process is not a structural pest control activity, provided that no claims are made for the control of pests in the structure or in the ductwork.

(3) The installation of animal traps in structures for the control of nuisance vertebrate pests other than commensal rodents (e.g. rats and mice) is not a structural pest control activity.

(4) Making an inspection for or issuing the Official South Carolina Wood Infestation Report, which must be issued by a licensed applicator as detailed below, is a structural pest control activity.

(5) Making pesticide treatment recommendations is a structural pest control activity.

(6) The inspection of a structure for the purposes of rendering an opinion as a consultant or expert regarding structural damage due to insects or other organisms, the adequacy of previous treatment or inspection, or similar issues regulated under these Regulations is not a structural pest control activity.

E. "Warranty sales" means the sale of renewable or non-renewable warranty coverage or contracts against structural pests, excluding guarantees of accuracy associated with the issuance of the Official S.C. Wood Infestation Report, which are not supported by any treatment or control measures. The re-issuance of warranties in the purchasing company's name following the purchase of one company by another is not a warranty sale, nor is the reinstatement of warranties on previously treated structures.

F. "Branch office" means any physical location at which business records are maintained separate from the main business office, or, if no records are maintained there, any location which three (3) or more employees utilize as their base of daily activities.

G. "Termiticide" means any pesticide or treated article intended to protect a structure against subterranean termites. The definition includes baits, all conventional soil-applied termiticides regardless of their mode of action, wood-treatment products such as borates when applied during or after construction, and construction materials impregnated with insecticides and intended to protect the structure from attack. It also includes stainless steel mesh, uniform-size sand or gravel materials, or other physical barriers for which termite control, termite detection, or termite mitigation claims are made.

H. "Pretreat" and "pretreatment" refer to the subterranean termite control treatment performed on a building while it is under construction. This treatment is normally performed in several stages as the building is completed.

(1) For liquid treatments a pretreat is considered to begin on the day that the first application of chemical is made.

(2) For pretreatments performed with bait systems or physical barriers the treatment is considered to have begun when bait or monitoring stations are first installed.

(3) For pretreatments conducted with borate or other wood-treatment products the treatment is considered to have begun at the time the first application to the structure is made.

I. "Pesticide use" means the distribution, holding for distribution or sale, sale, mixing, loading, transportation, application, or storage of any material for which pesticidal claims are made.

J. Performing public health pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel, or otherwise mitigate any pest of public health significance or engaging in any other activities intended or claimed to mitigate pests of public health significance for compensation or as a government employee on the property of another, including the installation of devices. Public health pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel or otherwise mitigate any pest of public health significance. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

(1) The use of EPA-registered disinfectants for ordinary or disaster-recovery cleaning purposes is not a public health pest control activity regulated by this Section.

(2) The installation of animal traps in or around privately-owned structures for the control of vertebrate pests of public health significance (e.g., rats and mice) is not a public health pest control activity regulated by this Section.

(3) The installation of animal traps and the distribution of poisons intended to control rat and mouse populations in or around municipal streets, utilities, and public buildings or in other public areas such as recreational and industrial parks, schools, public hospitals, and similar areas is a public health pest control activity regulated by this Section.

(4) The installation of ultraviolet flying insect traps, air curtains, screens, and similar devices is not a public health pest control activity regulated by this Section unless the devices emit or employ pesticides or public health protection claims are made.

K. Performing turf and ornamental pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel or otherwise mitigate any pest of publicly or privately owned turf or ornamental plantings for compensation or as a government employee on the property of another, including the installation of devices. Turf and ornamental pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel, or otherwise mitigate any pest of turf or ornamental plantings. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

(1) The application of pesticides to ornamental plants in a greenhouse or nursery is not a turf and ornamental pest control activity regulated by this Section.

(2) The installation of irrigation systems and similar devices, including chemigation systems, is not a turf and ornamental pest control activity regulated by this Section.

(3) The application of fertilizers not mixed with pesticides or herbicides is not a turf and ornamental pest control activity regulated by this Section, nor is the spray or broadcast application of grass seed, mulch, or mixtures not containing materials registered as pesticides or for which pesticidal claims are made.

(4) Maintenance activities such as mowing, trimming, watering, and landscaping are not turf and

ornamental pest control activities regulated by this Section, even if claims of weed reduction or plant health and growth are made.

L. Performing aquatic pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel or otherwise mitigate any pest of publicly or privately owned waters, including ponds, lakes, oceans, rivers, streams, reservoirs, and impoundments, whether or not they are navigable, for compensation on the property of another or as a government employee, including the installation of devices. Aquatic pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel, or otherwise mitigate any pest of publicly or privately owned waters, including ponds, lakes, oceans, rivers, streams, reservoirs, and impoundments, whether or not they are navigable, for compensation on the property of another. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

(1) The application of pesticides to ornamental aquatic plants in a greenhouse or nursery is not an aquatic pest control activity regulated under this Section.

(2) The installation of aeration systems and similar devices or the use of mechanical harvesters to remove vegetation is not an aquatic pest control activity regulated under this Section.

(3) The application of fertilizers not mixed with pesticides or herbicides is not an aquatic pest control activity regulated under this Section, nor is the use of dyes to suppress the growth of aquatic vegetation.

(4) The installation of devices to exclude, prevent, destroy, repel or otherwise mitigate aquatic pest animals is not an aquatic pest control activity regulated under this Section.

M. "Structure" and "building" mean any edifice to which activities regulated under these regulations are applied or proposed to be applied, including the area underneath and immediately adjacent to the foundation.

N. All pronouns and any variations thereof in these Regulations shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

27-1071. Registration of Pesticides.

A. All pesticide products must be registered with the Department for the period in which the products are offered for sale or distribution within the State.

(1) Registrations must be maintained for a period of two (2) years after the last shipment of product into the State in order to support materials remaining in the channels of trade after registration ceases. This requirement includes products distributed in bulk but does not include technical-grade pesticide material used for formulation into other pesticide products or pesticides distributed under an experimental use permit.

(2) Unregistered products must be removed from the retailer's shelves. The Director may, however, allow a reasonable period of time for the retailer to dispose of existing stocks of pesticides after the manufacturer or distributor has ceased to register the product with the State. The method of disposal shall be determined by the Director after appropriate consultations with the affected parties or their representatives.

B. The recipient of a Federal experimental use permit must notify the Director in writing of each experimental use permit issued to them under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for pesticides to be used in the State. The notification must be furnished within thirty (30) days after their receipt of the federal permit. The following information must be provided:

(1) A copy of the label accepted by the U. S. Environmental Protection Agency in connection with the permit. The accepted chemical name(s) of the active ingredients must appear on the label.

(2) A copy of the Experimental Use Permit issued by EPA, including the permit's identification number.

(3) A copy of the EPA letter establishing any relevant temporary tolerances.

(4) The location and acreage of each site within the State where the product will be used and the total amount of the product expected to be applied in the State.

(5) The crops or sites involved and the intended purpose or pest targeted by the applications.

C. The State hereby adopts the same requirements for labeling as established by the U. S. Environmental Protection Agency.

(1) The Department will normally accept a copy of the latest label accepted by the EPA for federal registration of the product, provided the label has been fully corrected with respect to changes requested by the EPA and provided the label is in compliance with the labeling requirements in existence at the time the label is submitted to the Department.

(2) Notwithstanding the above, the existence of Federally-accepted labeling does not obligate the Department to register any product for use in the State.

(3) The Director may refuse to register a product if in his opinion there is insufficient credible evidence regarding the formulation, efficacy, or suitability for use in South Carolina of the product.

(4) Before registering a product for use in South Carolina, the Director may require the submission of data satisfactory to him from the registrant specifically supporting any claims made through labeling or any other media about the efficacy, formulation, or suitability for use in South Carolina of the product.

27-1072. Special Permits.

A. Special permits may be granted by the Director for the use of certain pesticides within the State under specific circumstances. These permits will be in the form of either a South Carolina registration to meet certain special local needs or a South Carolina experimental use permit to allow the gathering of data needed to obtain a State registration for a special local need.

B. State registrations for special needs are authorized under Section 24(c) of Public Law 92-516, and State experimental use permits are authorized under Section 5(f) of Public Law 92-516. The Director shall adhere to the requirements established by pertinent Federal regulations relative to these two sections when issuing such State registrations or State experimental use permits.

C. Basic criteria for initial consideration of products for State registrations and State experimental use permits will be the following:

(1) That there is a special local problem within the State which has created the requirement for the new product or for the amended labeling of a registered product and;

(2) That the essential purpose of the request appears to the Director to be to fulfill the special local need rather than circumvent the normal process of obtaining a Federal registration or a Federal experimental use permit.

D. State registrations may be issued for a period of one (1) year or less and shall be subject to the prescribed registration fee. State registrations may be renewed annually upon written application to the Director. These applications will be reviewed annually by the Department to ensure that the use of the product still meets the basic criteria set forth in paragraphs B and C above.

E. State experimental use permits shall be issued for a specified period of time, are not subject to a registration fee, and may be extended at the discretion of the Director after appropriate consultations with the affected parties or their representatives.

27-1073. Coloration and Discoloration.

A. The Director shall use the Munsell Book of Color as a color standard as described in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136, et seq.).

27-1074. Pesticide Samples.

A. Authorized agents of the Division of Regulatory and Public Service Programs are authorized to collect official samples of pesticide products manufactured, distributed, sold, or held for sale within the State.

B. Authorized agents of the Division of Regulatory and Public Service Programs are authorized to collect official samples of pesticides and pesticide residues from known or suspected application sites, adjacent areas, application equipment, containers, service containers, or other locations reasonably expected to contain such pesticides, pesticide use dilutions, or pesticide residues within the State.

C. The samples will be collected and transported by a standard procedure outlined by the Director, in order to promote uniformity of the samples.

D. Samples taken will be analyzed for deficiencies and adulteration, or for other purposes as deemed appropriate by the Director.

E. The results of the analysis of samples obtained under the above provisions may be used as the basis for regulatory action initiated under the provisions of the South Carolina Pesticide Control Act.

27-1075. Restricted Use Pesticide Classifications.

A. The State may adopt the same list of restricted use pesticides and use patterns established by the U. S. Environmental Protection Agency.

B. The pesticides and use patterns restricted in the State are those so classified by the U. S. Environmental Protection Agency or so established at the discretion of the Director after appropriate consultations with the affected parties or their representatives.

C. Micro-encapsulated agricultural insecticides are especially toxic to honeybees and other pollinators. For the purposes of this section, a micro-encapsulated insecticide is any insecticide labeled or formulated for agricultural use, the active ingredient of which is micro-encapsulated in whole or in part. Such insecticides must be classified as Restricted Use and are subject to the following conditions:

(1) Micro-encapsulated insecticides formulated or labeled for agricultural use may be sold, offered for sale, distributed, or transferred only by licensed pesticide dealers.

(2) Micro-encapsulated insecticides formulated or labeled for agricultural use may be sold, distributed, or offered for sale only to persons who possess a current certified applicator's license and a permit to possess and apply such insecticide.

(3) Except as otherwise provided by law, no person shall possess or apply micro-encapsulated insecticides formulated or labeled for agricultural use to their own lands unless they possess a current private applicator's license and a valid permit to possess and apply such insecticides.

(4) Except as otherwise provided by law, no person shall apply micro-encapsulated insecticides formulated or labeled for agricultural use to the lands of another unless they possess a commercial applicator's license and a valid permit to possess and apply such insecticides.

(5) Any person desiring a permit to possess and apply micro-encapsulated insecticides formulated or labeled for agricultural use must submit on forms approved by the Department a request for such a permit. Such permit will incorporate the terms and conditions of issuance. Failure to comply with such terms and conditions will result in appropriate enforcement action.

(6) A person holding a valid Pesticide Dealer License is authorized by the terms of his license to possess micro-encapsulated insecticides formulated or labeled for agricultural use.

(7) Violations of this section shall be punished in accordance with Section 46-9-90, S. C. Code of Laws (1976) as amended.

D. The presence of descriptive phrases with a legally defined meaning on a pesticide label are enforceable restrictions on the distribution, sale, storage, and use of the affected product. Descriptions such as "certified applicator" or "pest control operator," for example, mean that the product can be distributed to or used by certified applicators only.

(1) It is a violation of this Section to sell or otherwise distribute products with restrictive label language to persons not meeting the qualifications specified by the label description.

(2) It is a violation of this Section for persons not meeting the qualifications specified on the product label to apply or otherwise use such products.

27-1076. Licensing of Pesticide Dealers and Dealer Records Maintenance.

A. No person younger than eighteen (18) years-old will be licensed as a pesticide dealer.

B. Pesticide dealers must pass a written examination, unless already certified as commercial applicators.

C. Pesticide dealers must complete an application form published by the Department.

D. The prescribed fee must accompany the application.

E. The dealer's license cannot be substituted for any part of an applicator's license, nor does the obtainment of a dealer's license reduce an applicant's obligation to pass examinations or pay the full fees for an applicator's license.

F. Pesticide dealer's licenses shall expire on December 31st. Licenses may be renewed annually prior to January 1st by application to the Director and payment of the annual fee. A 25% penalty will be charged for renewal applications filed on or after January 1st. Licenses that are not renewed by April 1st of the calendar year following their expiration, may not be renewed without the applicant's passing another examination and re-applying for the license.

G. There must be a separate individual licensed as a dealer for each store, sales location, or branch sales yard, including multiple sales locations owned by the same person, which sell restricted use pesticides.

H. Pesticide dealers must maintain records of all sales or other distributions of Restricted Use Pesticide for a period of two (2) years after the date of such sale or distribution. Records must include at a minimum the name and pesticide applicator's license number of the individual to whom the sale or distribution was made. These records must be presented to the Director or his agents for review and duplication upon request at the expense of the Department.

27-1077. Certification and Licensing of Private Applicators.

A. No person younger than eighteen (18) years-old will be licensed as a private applicator. In hardship cases, however, persons under the age of eighteen (18) may be licensed at the discretion of the Director after appropriate consultations with the affected parties or their representatives.

B. Private applicators are not required to demonstrate financial responsibility.

C. Persons holding a private applicator's license may use or directly supervise the use of a pesticide which is classified for restricted use, but only for the production of an agricultural commodity on property owned or rented by them or their employer. Private applicators may apply pesticides on the property of another person only if the application is performed without compensation, or if the only compensation provided is the trading of personal services between producers of agricultural commodities.

D. Private applicators must accomplish all of the following prior to being certified and licensed:

(1) Complete an application form published by the Department.

(2) Complete a prescribed training program and pass an exam dealing with pesticides.

(3) Pay the pro-rated portion of the prescribed normal fee for the remainder of the licensing period in which the license is issued.

E. Persons holding valid commercial and noncommercial applicator licenses, if they desire, may obtain a private applicator's license simply by submitting the proper application form and the prorated fee for the remainder of the licensing period to the Director. Additional training is not required.

F. Private applicator licenses are issued in five (5) year licensing periods or "recertification blocks." Blocks end in 2004, 2009, 2014, etc. Licenses are pro-rated and expire at the end of the block in which they are issued. During each recertification block after the one in which the license is issued each private applicator must successfully complete five (5) Continuing Certification Hours of training. Alternatively, the private applicator may complete the initial licensing requirements and re-apply to the Director for a license. All Continuing Certification Hours must be approved in advance by the Department.

G. All applications of Restricted Use Pesticides to any crop or commodity while it is held in a commercial storage or processing facility must be made by or under the direct supervision of a commercial applicator certified in Category 1C.

27-1078. Certification and Licensing of Commercial Applicators.

A. No person younger than eighteen (18) years-old will be licensed as a commercial applicator.

B. Commercial applicators must demonstrate to the Director the financial responsibility required by law, before the Director may issue a license.

C. Continuous financial responsibility is an on-going responsibility of the commercial applicator, and no commercial applicator may receive, purchase, apply, use, supervise, or conduct other application-related activities without the required financial responsibility in place.

(1) Category 3, 5, and 8 applicators must maintain financial responsibility in the amount of $50,000 with an annual aggregate claims limit of not less than $100,000.00 before performing any pest control activities, including advertising, as specified in Section 27-1085 L, below.

(2) Category 7 applicators must maintain comprehensive general liability financial responsibility of not less than $100,000.00 combined single limit liability coverage, which must include both bodily injury and property damage coverage.

(3) Failure to maintain the requisite financial responsibility in any category shall cause the immediate and automatic suspension of the commercial applicator's license until such time as current financial responsibility is satisfactorily demonstrated to the Director. If the applicator fails to re-instate their financial responsibility within three months, or if their license expires sooner, the license is automatically revoked and must not be restored until the applicator has again completed the certification process, including the exams.

D. The insurance or surety company must be one licensed to do business in South Carolina, and must give at least ten days written notice by certified mail to the Department as a condition precedent to the cancellation by the surety or insurer, material change, or cancellation by the insured.

E. The above notwithstanding, commercial applicators are not relieved from liability for damages to persons or property caused by pesticides applied by or under the supervision of the licensee whether or not such use conforms to the requirements of the product label and the rules and regulations promulgated by the Director.

F. Financial Responsibility may be demonstrated by:

(1) A current public liability and property damage insurance policy and or certificate of insurance (issued by an insurance company). Binders are not acceptable.

(2) A certificate of self-insurance issued by the Workman's Compensation Commission. (Although this certificate is specifically designed to cover workman's compensation claims, the Department considers this certificate indicates sufficient assets to cover the liability requirements of the law).

G. All commercial applicators must provide a phone number where the commercial applicator can normally be reached during normal working hours. If this number changes, the Department must be notified within three (3) working days.

H. Persons holding a commercial applicator's license may use restricted use pesticides, but only for work in the specific categories in which the commercial applicator has demonstrated competence. Commercial applicator's licenses will be issued for the following categories of commercial pesticide-application operations:

(1) Agricultural Pest Control (Category 1).
- (a) Plant (Category 1A).
- (b) Animal (Category 1B).
- (c) Stored Product Pest Control (Category 1C).

(2) Forest Pest Control (Category 2).
(3) Ornamental and Turf Pest Control (Category 3).
(4) Seed treatment (Category 4).
(5) Aquatic Pest Control (Category 5).
(6) Right-of-way Pest Control (Category 6).
(7) Industrial, Institutional, Structural and Health-Related Pest Control (Category 7).
- (a) General (Category 7A).
- (b) Fumigation (Category 7B).

(8) Public Health Pest Control (Category 8).
(9) Regulatory Pest Control (Category 9).
(10) Demonstration and Research Pest Control (Category 10).
(11) Aerial Applicator (Category 11).
(12) Miscellaneous (Category 12).
- (a) Wood Preservative Treatment (Category 12A).
- (b) Anti-fouling paint (TBT) Application (Category 12B).
- (c) Small Animal Pest Control (Category 12C).
- (d) Sewer Line Pest Control (Category 12D).

I. Commercial applicators must accomplish the following prior to being certified and licensed:

(1) Pass the Core examination, a basic test dealing with the minimum amount of subject matter considered essential to the safe use of restricted use pesticides.

(2) Pass a separate Category examination for each of the practice areas listed above. Note: passing the core exam without passing a category exam does not entitle the applicant to use or supervise the use of Restricted Use Pesticides or perform pest control activities in categories for which licensing is required.

(3) Complete an application form published by the Department.

(4) Fees for the examinations, licensing, and for certification in additional categories beyond the initial category of certification shall be as prescribed.

J. Aerial Applicators.

(1) All aerial applicators of pesticides (including transient aircraft pilots) are subject to the same requirements outlined in paragraph D (1) above. All aerial applicators must be certified and licensed by the Department before applying restricted use pesticides by air within the State.

(2) These regulations concerning aerial applicators do not in any way negate the regulations promulgated by the Aeronautics Division of the SC Department of Commerce or its successors.

(3) Aircraft must be secured against theft and tampering in a manner as prescribed by the Director after appropriate consultations with the affected parties or their representatives.

(4) Chemicals, use-dilutions, and their containers both on and off the aircraft must be secured in a manner as prescribed by the Director after appropriate consultations with the affected parties or their representatives.

K. Commercial applicator licenses shall expire on December 31st of each year.

L. Commercial applicator licenses are renewable annually by re-application to the Director prior to January 1st and payment of the prescribed annual fee. A 25% penalty will be charged for renewal applications filed after January 1st. Reexamination is not required for licenses renewed before April 1st as long as the recertification requirements of Paragraph 6, below, and continuous financial responsibility has been maintained as per Section 27-1078 C, above.

M. Commercial applicators holding valid licenses who desire to have a private applicator's license may submit the proper application form and the prescribed fee to the Director. A private applicator license will be issued with no additional training required.

N. Recertification periods for commercial applicators are five (5) year periods, beginning January 1st of 1994 and ending on December 31st of 1998, 2003, 2008, and every five (5) years thereafter. During each recertification period after the one in which the license is issued each Commercial Applicator must successfully complete ten (10) Continuing Certification Hours of training. Alternatively the applicator may complete the initial licensing requirements and re-apply to the Director for a license. All Continuing Certification Hours must be approved in advance by the Department.

27-1079. Certification and Licensing of Noncommercial Applicators.

A. No person younger than eighteen (18) years-old will be licensed as a noncommercial applicator.

B. Noncommercial applicators are not required to demonstrate the same financial responsibility required of commercial applicators.

C. Persons holding a noncommercial applicator's license may use restricted use pesticides, but only for work in the specific categories, as outlined for commercial applicators, in which the applicator has demonstrated competence. These licenses are issued to permit qualified governmental employees to perform their official duties on the job.

(1) Noncommercial applicators must submit an application form published by the Department and must pass the same set of examinations required of the commercial applicators.

(2) Noncommercial applicators are exempt from the fee requirements imposed on commercial applicators.

(3) Noncommercial applicators' licenses shall expire on December 31st of each year.

(4) Noncommercial applicators' licenses are renewable annually by re-application to the Director prior to January 1st. Reexamination is not required for licenses renewed before April 1st as long as the recertification requirements of Paragraph 6, below, are complied with.

(5) Noncommercial applicators holding valid licenses who desire to have a private applicator's license may submit the proper application form and the prescribed fee to the Director. A private applicator license will be issued with no additional training required.

(6) Recertification periods for noncommercial applicators are five year periods, beginning January 1st of 1994 and ending on December 31st of 1998, 2003, 2008, and every five (5) years thereafter. During each recertification period after the one in which the license is issued each Noncommercial Applicator must successfully complete ten (10) Continuing Certification Hours of training. Alternatively the applicator may complete the initial licensing requirements and re-apply to the Director for a license. All Continuing Certification Hours must be approved in advance by the Department.

27-1080. Exemptions from the Requirement of a License and of Certification.

A. Doctors of veterinary medicine applying pesticides to animals during the normal course of their practice are exempt from the requirements of certification and licensing provided that they are not regularly engaged in the business of applying pesticides for hire as their principal or regular occupation.

B. Medical personnel (both private and government) applying pesticides to man during the normal course of medical practice are exempt from the requirements of certification and licensing.

27-1081. Safe Handling, Storage, Display and Distribution of Pesticides.

A. The distribution of pesticides which have been classified for restricted use must be made only to the following:

(1) Licensed pesticide dealers;

(2) Licensed certified applicators; and

(3) Persons exempt from the requirements of licensing and certification.

B. Storage of pesticides in quantity (both general use (except as listed in paragraph D below) and restricted use items) by certified applicators, wholesalers, dealers and retailers must comply with the following:

(1) All pesticides stored in quantity must be stored in securely locked well ventilated rooms, well away from all food or feed items. The pesticides should be stored in such manner as to prevent fumes from contaminating food or feed.

(2) Pesticides should be separated during storage, preferably in bins, depending upon the type of pesticide. Each type of pesticide, i.e., herbicides, insecticides, fungicides, et cetera, must be stored separately from each other.

(3) Herbicides must not be stored in a bin on top of, or located above, any other type of pesticide, to preclude accidental contamination of other pesticides by leakage or spillage.

(4) Any pesticide container which is leaking or otherwise damaged must be immediately removed to an area where its contents will be fully contained in the event that its condition deteriorates further. The use of "overpack" containers or similar devices is sufficient to meet this requirement. Any pesticide material spilled or otherwise allowed to move outside of the container must be immediately cleaned up by an appropriate decontamination method. The location where any pesticide material has been spilled must likewise be immediately decontaminated by a method appropriate to the material spilled.

C. Display of pesticides (both general use and restricted use items) by dealers and retailers must comply with the following:

(1) All pesticides offered for sale must be in the registrant's approved container with the appropriate labeling from the registrant permanently attached.

(2) All restricted use pesticides must be separated from general use pesticides in displays of pesticides offered for sale to the general public.

(3) Herbicides must be separated from all other types of pesticides when displayed for sale to the general public. Furthermore, herbicides must not be displayed in a position above other types of pesticides, to prevent accidental contamination of other pesticides by leakage or spillage.

(4) All pesticides (either general use (except as listed in paragraph D below) or restricted use items) on display to the general public, should be displayed at a minimum distance of twenty-five (25) feet from all fresh, soft, loosely packaged or other types of food or feed items that can or may absorb odors from the pesticides. Examples of such food items would be bread, pastries, potatoes, fresh meats, cheese, macaroni and candy. All pesticides must be displayed at a minimum distance of four feet from canned foods or any other type of food or edible item.

(5) Any pesticide container which is leaking or otherwise damaged must be immediately removed from the display area to a location where its contents will be fully contained in the event that its condition

deteriorates further. The use of "overpack" containers or similar devices is sufficient to meet this requirement. Any pesticide material spilled or otherwise allowed to move outside of the container must be immediately cleaned up by an appropriate decontamination method. The location where any pesticide material has been spilled must likewise be immediately decontaminated by a method appropriate to the material spilled.

D. The following types of pesticides are exempt (unless classified as restricted use pesticides) from storage and display requirements of paragraphs B and C (2) through C (4) above. They are still subject to the requirement of paragraph C above.

(1) Bleach products.

(2) Disinfectant products.

(3) Pet animal and tropical fish treatment products.

(4) Sink drain and toilet bowl products.

(5) Paint products other than TBT paints.

(6) Additional exemptions may be granted by the Director upon special request, if warranted.

E. All aircraft pesticide loading zones must be adequately delimited and posted with signs indicating that the area is used as a pesticide loading zone for aircraft. For mobile support vehicles (e.g. trucks supplying fuel and chemical for helicopter applications) the placement of equivalent signage on the truck shall be sufficient to comply with this Section. Conformance with the requirements of this Section does not relieve any person from liability for injury or damage to another person caused by the pesticides, either while being stored or after spillage on the ground.

F. All pesticides distributed in bulk must be registered both with the U. S. Environmental Protection Agency and with the State.

(1) Any firm distributing or selling bulk pesticides within the State must notify the Department of such practice on January 1st of each year.

(2) A copy of the accepted label for the product must be attached to the shipping papers, and left with the consignee at the time of delivery.

(3) Pesticide products stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, must bear a copy of the accepted label or labeling, including all appropriate directions for use, securely attached to the container in the immediate vicinity of the discharge control valve.

(4) The appropriate provisions of Title 49 of the Code of Federal Regulations, as administered by the U. S. Department of Transportation, concerning the transportation of hazardous materials, must be adhered to by any person transporting pesticide products within the State.

(5) All containers (both holding tanks of the formulator and the customers' stationary containers) must be provided with suitable sample points to permit withdrawal of samples by personnel of the Department. Samples obtained by Departmental personnel in this manner must be accepted without reservation as being representative of the material in the container and described on its label.

G. All persons engaged in pesticide operations using compressed gas tanks or cylinders must ensure that all propellant supplies for pesticides used in fumigations or other pesticide applications are equipped with properly functioning back flow prevention devices which will prevent the entry of pesticide into the compressed gas tank or cylinder.

(1) No person shall operate any compressed gas tank or cylinder in pesticide operations unless a back flow prevention device is installed and properly functioning.

(2) The back flow prevention device must be placed between the tank/cylinder regulator and the pesticide system.

(3) Pesticide operations must cease prior to the tank/cylinder pressure falling below twice the pesticide system operating pressure, or 200 psi, whichever is greater.

27-1082. Disposal of Pesticides and Pesticide Containers.

Unwanted pesticides and pesticide containers must be disposed of in accordance with the regulations promulgated by the South Carolina Department of Health and Environmental Control.

27-1083. Pesticide Application Assurance, Vehicle Identification, Applicator Records Maintenance, and

Direct Supervision.

A. At each customer's request, all licensed commercial and non-commercial pesticide applicators are hereby required to provide the following information:

(1) Structural and general household pest control operations:

(a) Provide all customers at their request with a completed, fully legible, statement with respect to any application of pesticides on property under their ownership or control.

(b) The statement must contain at a minimum the following information:

(1) The name of the company or firm and their address.

(2) The pest or pests to be controlled.

(3) The common chemical name of the active ingredient(s) (not the brand name) of the pesticide applied.

(4) The name of responsible licensed applicator.

(c) If pest-control services are being provided under a continuing contract (i.e. monthly, quarterly, or otherwise other than a one-time treatment) for general household insect control other than wood-destroying insects or rats and mice, then more general terms may be used relative to the name of the pest and several alternate chemicals may be listed. In this event all of the above requirements for record maintenance and disclosure must also be complied with.

(2) Aerial applicators.

(a) Provide all customers at their request with a completed fully legible statement with respect to any application of pesticides.

(b) The statement must contain the following information, as a minimum:

(1) Company or firm name and address.

(2) The pest or pests to be controlled, or purpose of the pesticide application.

(3) The chemical or common name of the active ingredient(s) (not the brand name) of the pesticide applied.

(4) Name of responsible licensed applicator.

(3) Custom ground applicators. (This group includes commercial agricultural applicators, lawn, golf course, ornamental plant and tree pesticide applicators, mosquito control pesticide applicators, wood preservative applicators, and all other types of commercial and non-commercial pesticide applicators.)

(a) Provide all customers at their request with a completed, fully legible, statement with respect to any application of pesticides.

(b) The statement must contain the following information, as a minimum:

(1) Company or firm name and address.

(2) The pest or pests to be controlled, or purpose of the pesticide application.

(3) The chemical or common name of the active ingredient(s) (not the brand name) of the pesticide applied.

(4) Name of responsible licensed applicator.

(4) For non-commercial applicators only, or for commercial applicators making applicators for and under the direct supervision of a governmental entity, the disclosure requirements of the above Sections may be met by announcement or publication of the nature and timing of pesticide applications in the appropriate mass media outlets not less than 24 hours prior to the application.

B. All vehicles used by licensed commercial and non-commercial pesticide applicators to transport pesticides to and from the application site, or used in the actual application of pesticides, must bear an identification symbol, furnished by the Department, on both the right and left sides of the vehicle. All boats used in commercial and non-commercial pesticide applications must bear the same symbol on both the right and the left side of the vessel. Aircraft are identified by their registration number and thus will not be required to bear the State identification symbol.

(1) The symbol must be maintained clean and recognizable from a minimum distance of one- hundred (100) feet.

(2) State identification symbols are not required on every piece of small equipment used by a licensed applicator, nor on every automobile or truck owned by a company, firm, or applicator. Symbols are required only on the actual transport, service and application vehicles.

C. Applicator records maintenance.

(1) Records must be maintained by each company or firm employing licensed commercial or noncommercial pesticide applicators, each licensed commercial applicator if self-employed, and by the employer of each licensed noncommercial applicator, of all pesticides used.

(2) The record must include the quantity of each pesticide used, received, or purchased, the common chemical name of the active ingredient(s) (not the product name), the pest or purpose for which the pesticide was applied, and the date and place of application. It is not necessary to list the pests involved for general household insect control or for general insect control measures in commercial and industrial establishments. In these cases the record may indicate merely "household pests" or "general insect control."

(3) Records of pesticide applications must be maintained by the company, firm, or licensed commercial or noncommercial applicator as detailed below:

(a) For pre-construction termite-control treatments ("pretreats"), including the installation of bait systems and baits containing active ingredients, records of termiticide application must be maintained for a period of five (5) years or as long as a continuing warranty or contract exists, whichever is longer, and must be made available to the Director or his designee for review and duplication upon request at the expense of the Department.

(b) For post-construction termite-control treatments, including the installation of bait systems and baits containing active ingredients, records of termiticide application must be maintained for a period of two (2) years from the date of application or as long as a continuing warranty or contract exists, whichever is longer, and must be made available to the Director or his designee for review and duplication upon request at the expense of the Department.

(c) Records of pesticide applications other than termiticides must be maintained for a period of two (2) years from the date of the application.

(4) The Director may request records of all pesticides used by any applicator. This includes application records as well as any records of or related to pesticides purchased or otherwise received by the applicator. The expense of copying or duplicating those records shall be paid by the Department.

D. Direct Supervision: The level of direct supervision required for certain pest control activities will vary according to the nature of the application.

(1) Unless the label of the product being applied requires a licensed applicator on site, Licensed Commercial and non-commercial applicators whose business location is not within the boundaries of the State of South Carolina must have a licensed applicator within 30 (thirty) minutes of the application site by ordinary ground transportation and immediately available by telephone or radio.

(2) For Licensed Commercial and non-commercial applicators whose business location is within the boundaries of the State of South Carolina:

(a) The use of all fumigants will require an applicator holding a valid Commercial Applicators License in Category 7B, Category 1C, or other appropriate category as determined by the Department, to be physically present on site and supervising the application at all times when pesticide is being applied.

(b) The use of any pesticide classified as restricted use by the EPA or the Department, regardless of the signal word, will require the supervising licensed applicator (licensed in the proper category), to be within 30 (thirty) miles by ordinary ground transportation of the application site and immediately accessible by telephone or radio.

(c) For categories of use in which licensing is mandatory, the use of any pesticide which has the signal word "Danger" or "Warning" will require the licensee supervising the application to be within 60 (sixty) miles by ordinary ground transportation of the application site and immediately accessible by telephone or radio.

(d) For categories of use in which licensing is mandatory, the use of any pesticide which has the signal word "Caution" will require the licensee supervising the application to be within 100 (one-hundred) miles by ordinary ground transportation of the application site and immediately available by telephone or radio.

27-1084. **Denial, Suspension or Revocation of a License or Certification; Assessment of Criminal Penalties.**

A. Each of the following acts shall be considered a violation of the South Carolina Pesticide Control Act, in addition to those mentioned in the Act, and shall constitute grounds for denial, suspension or revocation of a license or certification:

(1) Use of a pesticide in a manner inconsistent with the labeling accepted by the U.S. Environmental Protection Agency or the South Carolina registration for that pesticide. The term "use" shall include distribution, application, mixing, loading, storage and disposal.

(2) Making false, fraudulent or inadequate records, invoices or reports, or failing to keep the records required by the Act.

(3) Committing an act resulting in assessment of a civil or criminal penalty under 7 U.S.C. Section 136-1, as amended.

B. Any person who commits any of the above acts shall be deemed guilty of a misdemeanor and criminal penalties may be assessed pursuant to Section 18 of the South Carolina Pesticide Control Act.

27-1085. **Standards for Prevention or Control of Wood-destroying Organisms.**

A. Every person performing either preventive measures against or control measures for termites and other wood-destroying organisms (both insects and fungi) on the property of another must follow at a minimum the methods and procedures specified in the following codified paragraphs of this regulation. B. Control measures used must be appropriate for the type of termite or other wood-destroying organisms present.

(1) For other than subterranean termite treatments, if no wood-destroying organism is actually present then this fact and the preventative nature of the proposed treatment must be disclosed to the consumer in writing before the work begins.

(2) Treatment and inspection must be performed in accordance with these regulations and with the terms of the written agreement or contract for as long as the contract is valid.

(3) Copies of the warranty, treatment records, waivers issued, and inspection records must be maintained by the firm for a period of five (5) years or for the duration of the warranty, whichever is longer, and must be presented to the Director or his authorized representatives for review and duplication upon their request at the expense of the Department.

(4) The presence of Formosan subterranean termites (Coptotermes formosanus Shiraki) must be disclosed when an active infestation has been found in a structure. The documentation provided with any subterranean termite control contract or warranty must specify whether coverage for Formosan subterranean termites is included and the nature of that coverage (i.e. whether coverage is for retreatment only or includes the repair of damages due to the Formosan subterranean termite infestation).

C. Treatment for each property must be made to the entire structure and must meet the standards outlined in these Regulations unless structural or physical characteristics of the property or the stipulations of the property owner or their agent make adherence to these standards unnecessarily difficult or costly. In such cases, an Official Waiver of Standards Form clearly identifying the standard(s) not performed must be executed and acknowledged in writing by the property owner before work begins.

(1) The Waiver form must be the most recent version published by the Department and must be provided by the pest control operator. A signed copy of the waiver must be supplied to the property owner. A signed copy of the waiver must be maintained by the pest control operator for as long as the property is covered by the warranty based on the treatment for which the waiver was issued.

(2) Due to the accessibility of the various construction elements during construction and prior to completion of the buildings, waivers must not be issued during preconstruction treatments unless the applicator has requested and received permission in writing from the Director or his authorized representative. This prohibition does not include those situations that are out of the control of the applicator such as wooden decks added after the completion of the final grade, step down footers, or similar items.

(3) All waivers issued must meet the intent of this Section and must not be used to create an opportunity to sell a treatment using less labor or termiticide.

(a) Multiple structures may be included on the same waiver form only if there is a common authorized agent for or owner of the structures and the same treatment standards are being waived on each building. In this case each structure or building where treatment standards are being waived must be identified on the waiver form.

(b) Where the two conditions identified in paragraph "a" above are not both met, a separate and unique waiver must be properly executed for each structure where treatment standards will not be completed.

(4) Waivers are not required for retreatments performed under an existing contract, booster treatments performed to continue coverage under an existing contract, or partial treatments performed to re-instate a contract that has lapsed for less than one (1) year.

D. The chemicals, methods, and systems permitted in the control of termites or other wood-destroying organisms shall be only those pesticides which are registered in South Carolina for that use. The chemical and control methods must be used in the proper proportions and in the quantities and manner directed on the label or in these Standards.

(1) No application of termiticides may be made for any purpose using a rate or volume lower than that specified in the labeling of the product as accepted in South Carolina.

(2) If the State has accepted the labeling of a termiticide product that allows the structure to be protected by completion of less than a full conventional liquid termiticide treatment as described in these Standards, then only those standards that apply to the treatment actually performed shall be required to be completed.

(a) Excepting the standards noted in Section (3) below, waivers as detailed in Section C above need not be completed for standards not required to be completed by the termiticide label.

(b) This provision only applies to post construction treatments.

(3) For every termite-control treatment performed in the State, regardless of the method of control employed or whether the treatment is conducted during construction or as a post-construction treatment, the following Standards detailed in Section 27-1085 G (2) (a), (b), and (c) must be completed or waived if they are appropriate to the structure. These Standards require, respectively, the removal of cellulose debris and other debris that may interfere with inspection and treatment, the correction of wood-to-ground contact, including expanded-foam insulation materials, and the removal of subterranean termite shelter tubes on both masonry and wooden foundation elements. Section 27-1085 G (2) (g), which requires the installation of at least one square foot of ventilator for every 150 (one-hundred fifty) square feet of crawlspace area, must be completed or waived on post-construction treatments.

(4) Termite control products or devices (e.g., barriers, wood treatments) must be properly registered with the Department before they can be used.

(a) Before a licensed applicator can employ, install, or supervise the use of any termite control product or device not applied to the soil the registrant of that product or device must certify to the Department in writing that the applicator has been properly trained in the product's use and management. Use, installation, or supervision of the use of these products by a licensed applicator for whom certification has not been received by the Department at the time of the installation, use, or supervision is a violation of this Section.

(b) Registrants must not provide materials or devices referenced under this section to an applicator who has not been properly trained.

(5) The Standards referenced in Section (3) above must be completed for all bait and wood-treatment termite-control methods unless an Official Waiver of Standards Form or the equivalent documentation published by the Department is properly executed. This form must be completed and signed by the property owner or their agent before the work begins. The Waiver must be maintained by the firm for a period of five (5) years or for the duration of the warranty, whichever is longer, and must be presented to the Director or his authorized representatives for review and duplication upon their request at the expense of the Department. The termiticide residue requirements referenced in this Section cannot be waived.

(6) All applications of termiticides, including re-treatments and supplemental or "booster" treatments, must be properly recorded on the Record of Termiticide Use form published by the Department or in an alternative manner acceptable to the Department. These record-keeping requirements for termiticide applications apply to bait installations and wood-treatment methods as well as to liquid termiticides. These records must be maintained by the firm as specified in Section 27-1083.C. above , and must be presented to the Director or his authorized representatives for review and duplication upon their request at the expense of the Department. Record-keeping requirements do not apply to the installation of devices intended only to monitor or reveal subterranean termite populations.

E. Periodic inspections may be made by Department employees to ensure that all structural pest control activities are performed in compliance with these regulations and the treatment standards. Soil, use-dilution, or other appropriate samples may be drawn during these inspections. The Department shall develop sampling protocols and threshold residue levels for each registered termiticide which reflect the minimum amount of termiticide residue expected to be present within an appropriate period of time after a proper treatment. Termiticide applications which do not meet or exceed these residue levels are in violation of this Section.

F. Discrepancies in treatment procedures found during any inspection, including minor violations as determined by the inspector and identified in writing by the Department, must be corrected within a period of time as specified by the Director, after written notification to the applicator. The Department may base formal enforcement actions on these discrepancies. Failure to correct these discrepancies within the period of time specified may result in additional civil/criminal penalties. Corrections must be made so long as the property is under the ownership of the individuals who initially contracted for the subterranean termite treatment, their heirs or estate, whether or not the property remains under contract with the applicator at the time the notification is given.

G. Only pesticides properly labeled for subterranean termite control and registered for use in South Carolina shall be used.

(1) Where the Federal labeling accepted in the State requires more thorough treatment (e.g. closer spacing of drill holes or more volume of termiticide) than the treatment standards listed below the Federal labeling shall have precedence. Where the State standards require more thorough treatment the State standards must be followed.

(2) On each initial Subterranean Termite Control Treatment the Pest Control Operator must perform a complete treatment as detailed in these Regulations, except as provided for in Section D (2) above, and must provide the following minimum service:

(a) Remove from crawl spaces all cellulose debris (wood, paper, stumps, cloth, cotton, or other similar materials) and any other debris or rubble which would interfere with effective treatment and inspection. Remove all form boards which are in contact with the soil or are less than eight (8) inches from the soil.

(b) In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material.

(c) Scrape off all visible and accessible termite shelter tubes, including those on the wood. Because the presence of intact subterranean termite shelter tubes is presumptive evidence of the presence of an active infestation of subterranean termites, all subterranean termite shelter tubes must be removed at the time of the first inspection following the initial treatment. Subterranean termite shelter tubes must also be removed following any retreatment of the structure. Breaking gaps into the shelter tubes is not sufficient to meet this requirement.

(d) For conventional liquid treatments, treat all soil adjacent to foundation walls, pillars, and other supports by forming a narrow trench at the base of each side and flooding it with termiticide in accordance with label directions. Back-fill placed in the trench must also be treated in accordance with the label directions. Where footings are not covered by soil the trench may follow the edge of the footing. The soil around locations where pipes enter the soil must be treated in the same manner as foundation supports. When pipes are covered with insulating material, soil or insulation should be removed so that the insulation stops at the soil and the area should be thoroughly treated as previously described. In no case should termiticide be applied to soil in contact with ventilation ducts.

(e) All cavities and voids within hollow masonry units (except bricks), between courses of masonry units, or within or between construction elements that are in contact with the soil must be drilled at intervals of no more than 16 (sixteen) inches or as prescribed by the product label if the label requires closer spacing of drill holes and treated with termiticide as per the label instructions. Voids must be treated as low as practical. Voids that have been filled with concrete need not be treated but should be test-drilled to verify their condition.

(f) Soil areas beneath attached concrete slabs (earth-fill porches, patios, carports, garages, walkways, etc.) which are less than 18 (eighteen) inches below the sill or plate line of the structure must be treated by one of the following methods:

(1) By cutting access openings and removing soil adjacent to the foundation and below the expansion joint the length of the fill at least six (6) inches deep below the bottom of the slab and six (6) inches wide and applying chemical as specified on the label.

(2) Or by drilling vertically and applying chemical from the top of the slab at not more than twelve (12) inch intervals parallel to and not more than twelve (12) inches away from the foundation wall or expansion joint.

(3) Or by rodding from the side(s) and applying the permitted chemical beneath the slab along the length of the expansion joint ("long-rodding") in a continuous barrier not more than six (6) inches from foundation walls.

(4) Or by drilling from the crawl space or basement side and through the foundation wall immediately beneath the slab at no more than twelve (12) inch intervals and treating the soil beneath the slab.

(5) The void in the double brick perimeter walls of earth-filled and suspended porches must be drilled and treated at intervals of no more than sixteen (16) inches if the superstructure above the porch rests on wooden supports such as posts, columns, railings, or similar elements. If there are no wooden supports the voids in the side walls perpendicular to the main structure must be drilled and treated to a distance of 4 feet from the main structure at intervals of no more than sixteen (16) inches.

(g) Install foundation vents to meet the following requirements:

(1) One square foot of ventilator must be present for each 150 (one-hundred-fifty) square feet of crawl space area.

(2) There must be no "dead ends" or other areas left unventilated.

(h) In the crawl space remove enough soil to give sufficient space between the wooden substructure and the soil for access for visual inspection and for the application of proper control measures. In any case, minimum clearance between untreated wood and soil must be at least eight (8) inches.

(i) In treating structures built on a concrete slab or on the ground (including basements), soil beneath all points of potential termite entry, such as expansion joints, plumbing pipes, and similar areas must be saturated with termiticide by treating from above or by horizontally drilling or rodding at no more than twelve (12) inch intervals, immediately beneath the slab. Treatment from above must consist of vertically drilling the slab no more than twelve (12) inches from the potential point of termite entry. Open bath traps must be treated by cutting an access opening to permit the application of termiticide or by a comparable method.

(j) Inspections must be conducted as per the terms of the warranty or the termiticide label, whichever results in more frequent inspection of the structure.

H. Subterranean Termite Control Pretreatment of Structures.

(1) In new construction treatment, the approved liquid termiticide must be applied in accordance with label instructions to cavities in pillars, tiles, brick or concrete block walls, voids between brick and block walls, or other cavities likely to be penetrated by wood destroying organisms by flooding the voids before they are covered.

(2) Soil surfaces to be covered by slabs must be treated with a liquid termiticide or other approved appropriate technology before the slab is poured. If treatment is not performed before the slab is poured then the slab must be treated as per Section G (2) (f) or G (2) (i), or both if both are applicable, above.

(a) Within ninety (90) days after the transfer of the property to the first deeded owner or notification that the final outside grade has been completed, whichever occurs first, treat the soil that is adjacent to the outside foundation wall with an approved liquid termiticide or approved alternative technology.

(b) If another technology is used to protect the slab, such as barriers or termiticide baits, the alternative technology must be used in strict accordance with the accepted South Carolina labeling for the product. All applicators or installers of alternative technology must be trained and certified as per the requirements of Section D (3) above.

(3) For crawlspace foundations the pretreatment must comply with the provisions of Section D (4) above. Except as provided for by the label provisions noted in Section D (3) all applicable treatment Standards detailed in Section G (2) must be properly completed or waived.

(4) Warranty.

(a) For new single family residential construction the Pest Control Operator (PCO) will provide to the Builder (or the owner, if known at time of treatment) a one year transferrable warranty covering the repair of damage due to subterranean termites and retreatment of the infested portions of the property. The warranty period begins the day the first chemical application is made. The licensed pest-control business must offer to transfer the warranty to the first deeded owner of the property or to any person who purchases the property within five (5) years of the initial treatment date provided that the warranty has remained in effect through each owner of the property. The licensed pest-control business must offer each owner of the property the opportunity to renew the warranty on the same terms and conditions the business offers renewals of the regular termite treatment contracts for the first five (5) years after the initial treatment date. Failure of the homeowner to renew in any one year relieves the business of any future responsibility for renewals, based upon this section. The renewal warranty must at a minimum offer retreatment coverage but may also offer damage-repair coverage, at the option of the business.

(b) The requirement to issue warranty coverage shall not extend to:

(1) Violations of the appropriate Building Code by the builder or the first property owner after the builder which are installed after the completion of the pretreatment.

(2) Structures with rigid foam board insulation material of any kind extending below the exterior grade.

(3) Structures with untreated wood or with inadequately treated wood extending below the exterior grade.

(4) Structures with inadequate ground clearance or other design features which preclude the proper completion of the minimum treatment standards referenced in these Regulations.

(5) Structures to which additional rooms or other features have been added after the completion of the pretreat but without the applicator having the opportunity to treat the additions.

(6) Structures where remodeling or landscaping after the completion of the pretreat has resulted in a degree of soil disturbance that could reasonably be expected to have significantly affected the termite treatment.

(7) Other situations as determined on a case-by-case basis by the Department's field inspectors. In these cases the Department will provide a written explanation of its determination.

(c) Because of the ease of access to all construction features, waivers may not be issued for treatment standards during pretreats without the express written consent of the Department. If waivers are issued both the waiver and the written memorandum from the Department authorizing the waiving of treatment standards on that specific structure must be delivered to the first property owner after the builder.

(d) The Director may require that deficiencies in pretreatments that cannot be corrected as detailed in Section 27-1085 G 2 above because of the completion of that stage of construction be corrected by the treatment of the structure with another appropriate technology.

I. Control measures are not normally necessary for infestations of wood-destroying organisms which are not capable of reinfesting structural lumber or other properly seasoned wood except as provided below.

(1) Control measures may be performed for non-reinfesting wood-destroying pests at the customer's request. In such cases the applicator shall provide to the customer before the work begins a statement to the effect that the infestation is not capable of re-infesting seasoned lumber and that the treatment is being performed at the customer's request.

(2) Rustic structures and modern log homes may be initially infested with large numbers of buprestid and cerambycid beetles. Control measures may be proposed and performed in these situations even though these insects normally do not re-infest, subject to the identification and disclosure requirements of this Section.

(3) Structural infestations of other wood-destroying organisms will be identified and disclosed as follows:

(a) An infestation of old house borers (Hylotrupes bajulus L.) will be reported by either its scientific name or the common name "old house borer."

(b) Powder post beetles for which control strategies are very similar such as the families Lyctidae, Anobiidae, and Bostrichidae will be reported by either their family names or as "powder post beetles."

(c) The specific cause of damage due to non-reinfesting beetles does not have to be identified. This does not relieve the applicator of the responsibility to disclose that damage when required (as on the Official South Carolina Wood Infestation Report).

(d) Wood-decay fungi and surface molds and mildews may be identified and disclosed as such without further detail.

(e) Drywood termites may be disclosed as such without further detail.

(4) Before treatment is recommended, infestations of other wood-destroying organisms capable of reinfesting structural lumber or seasoned wood must be determined to be active.

(a) The following criteria will be used to determine the activity of these infestations.

(1) Drywood termites: The emergence of live insects inside the structure, the repeated presence of swarmers (alive or dead) inside the structure, or a repeated accumulation of fecal pellets in an area are all reasonable indications of an active infestation of drywood termites. Preventative treatments for these insects are not normally warranted in South Carolina due to the slow rate at which their damage accumulates.

(2) Powder Post Beetles (Anobiidae, Lyctidae, Bostrichidae, and related beetles): The presence of a trail or "stream" of fresh frass (the color of fresh-cut wood) stuck to the wood below emergence holes or piled beneath emergence holes indicates an active infestation of powder post beetles. Emergence holes alone do not indicate activity nor does the presence of old dingy frass in emergence holes, galleries, or protected locations.

(3) Old House Borer: (Hylotrupes bajulus L.). A live adult or larval specimen must be collected from the wood to demonstrate activity of this insect in a structure. Alternatively, the presence of the distinctive larval gnawing noises can be used to establish activity. The presence of ragged oval exit holes or fresh-appearing frass is not sufficient to indicate activity in the absence of specimens or noises.

(b) Treatment: All beetle frass must be removed from treated vertical surfaces during a localized treatment. During a fumigation frass must be removed from at least two readily-accessible areas to allow the determination of the success of the fumigation. If streaming frass is observed during the next season of activity the infestation must be considered to have remained active. Treatments, especially fumigations, may be proposed and conducted only when there is conclusive evidence of an active infestation, or with the specific written consent and acknowledgment of the lack of activity on the part of the property owner or their agent.

J. Moisture Control.

(1) Excessive moisture conditions are present any time wood moisture content readings reach or exceed 20% or standing water is present in the crawlspace or around the foundation. Wood-decay fungi become active, and decay damage occurs, at wood moisture-content levels of 28% and above. Reports of excessive moisture conditions and active decay fungi must follow these guidelines.

(2) Correction of excessive wood moisture levels is normally accomplished by the installation of a polyethylene vapor barrier over the crawlspace soil or the installation of additional foundation vents. Excessive moisture conditions caused by poor drainage and the constant influx of water into the crawlspace soil may require the installation of a sump pump and drain system. The application of fungicidal sprays to the substructure for the control of wood-destroying fungi may not be performed until the physical correction of the excessive moisture conditions has been accomplished. Sump pumps may not be installed without an accompanying drain or trench system sufficient to carry water to the pump.

K. Wood Infestation Report.

(1) Any wood infestation report issued for the purpose of describing the apparent absence of wood-destroying organisms from a building or structure in connection with a sale or mortgage of real property must be issued by an individual currently licensed in Category 7A, Industrial, Institutional, Structural, and Health-Related Pest Control and covered under a valid Pest Control Business License issued by the Department. The report must be signed by the licensed individual and include their applicator and business license number.

(2) The inspection must be reported on the most current Official South Carolina Wood Infestation Report Form as published by the Department. The form for this report shall be furnished by the licensee.

(3) The inspection for the Wood Infestation Report must include at a minimum:

(a) A visual inspection of all accessible portions of the interior and exterior of the structure, including crawlspaces, utility areas, and attics.

(b) Careful sounding and probing of all areas where damage is visible.

(c) Representative wood moisture-content readings around the interior perimeter of the crawlspace and in the accessible portions of the center of the crawlspace.

(d) The determination of the nature and activity of all visible and accessible wood-destroying insect infestations in the structure.

(e) The determination of the nature and cause of all visible and accessible wood-destroying insect damage in the structure.

(f) The determination of the nature and activity of all wood-destroying fungi, including decay damage whether active or not, present in the structure below the level of the first main living-area floor. The first main living-area floor of the house is the first floor above the basement or crawlspace, or the elevated living-area floor in houses raised upon pilings. The phrase "below the level of the first main living-area floor" also includes the substructure below the first main living floor of the house. Decay damage in the upper portions of exterior siding, fascia and trim boards, chimneys, eaves, soffits, and similar areas is beyond the scope of the Wood Infestation Report. Decay damage in the lower portions of exterior doors, door jambs and frames, and similar construction elements, however, must be reported.

(4) The Wood Infestation Report is in no way a report of the presence or absence of health-related fungi or conditions conducive to their presence or development in the structure.

(5) The Wood Infestation Report must at a minimum disclose:

(a) All inaccessible parts of the structure.

(b) The apparent presence or absence of all visible insect-related damage in all accessible areas of the structure. The reporting of a "previous infestation" of a particular insect is not sufficient to meet this requirement to report insect damage.

(c) The apparent presence or absence of all visible active and previous wood-destroying insect infestation in all accessible areas of the structure.

(d) The wood moisture-content readings obtained in the substructure, as well as any decay damage, active wood-destroying decay fungi, or excessive moisture conditions in visible and accessible areas below the level of the first main floor. Decay damage must be reported as such.

(e) The specific location and approximate extent of all damages, active infestations, previous infestations, and excessive moisture conditions. These items may be reported as "widespread," "throughout the substructure," or in similar terms only if their extent and occurrence justifies such broad language.

(f) All damage must be reported whether or not it requires or may require repair or further inspection by another professional. Damage remaining in areas that have previously been repaired must also be reported.

(6) The Wood Infestation Report is not a warranty against future infestation, nor does it place any obligation for the correction of reported damage or infestation upon the applicator or business issuing the report.

(7) In determining whether an infestation of insects or decay fungi is active in a structure the inspector must use the criteria set forth in Sections I and J, above. Inspectors must fully explain on the reverse of the form the basis for their determination of whether an infestation of insects or decay fungi is or is not active in the structure.

L. Any person performing any of the activities listed below on the property of another must be licensed in the category indicated by the Department or must work under the direct supervision of one so licensed.

(1) Any person performing a structural pest control activity as defined in Section 27-1070 D of these Regulations. Persons performing structural pest control activities in or adjacent to property rented, leased, or otherwise occupied by unrelated persons (in schools, apartment or condominium complexes, hospitals, and similar situations) are not exempt from these requirements.

(2) Any person performing a public health pest control activity as defined in Section 27-1070 J of these Regulations.

(3) Any person performing a turf and ornamental pest control activity as defined in Section 27-1070 K of these Regulations.

(4) Any person performing an aquatic pest control activity as defined in Section 27-1070 L of these Regulations.

M. No main business office where records are kept or branch office must engage in structural pest control activities in the State without first obtaining a Pest Control Business License from the Department.

(1) A Business License will be issued only when the location has appointed a Designated Certified Applicator in charge (DCA). The DCA must be licensed by the Department in Category 7A and permanently assigned to that specific location on a full time basis while the business is operating. The DCA must be present during the normal operation of the business, except for normal sick or annual leave and training days away from the office. No individual may be designated as the DCA for more than one location from which pesticide applications are made.

(a) Application must be made to the department on the Business License application form and must include copies of the proposed DCA's Category 7A applicator's current license and proof of financial responsibility statement.

(b) All applicants must demonstrate to the satisfaction of the Department that the DCA is duly licensed and operates from the applicant's location. Additionally the DCA must possess either a four-year college degree in the natural sciences or two years of verifiable experience in pest control. The Director may waive the experience requirement upon written application by the business licensee. In appointing a DCA the Director will consider, among other factors, the enforcement histories of the business and the proposed DCA, the record of Continuing Certification Hours, and past examination results.

(c) No business whose business license has been revoked or suspended may circumvent this suspension or revocation by applying for a new "Business License" under another name or in the name of another business. This prohibition exists for the duration of the suspension or revocation period. Sale of the business to a separate party is not prohibited by this section provided it is not an attempt to circumvent appropriate enforcement action against the business.

(d) The annual Business License fee shall be as prescribed. The Business License is valid from January 1st through December 31st unless suspended or revoked.

(e) Changes of material information such as, but not limited to, the name or license status of the certified Category 7A applicator, the financial responsibility status of that applicator, or any change in the location of the facility must be reported to the Department within ten (10) days.

(f) Violations of the South Carolina Pesticide Act that occur as a result of activities generated at or by a location may result in sanctions against the Business License as well as or in lieu of sanctions against the individual licensee. Such sanctions may include penalties up to $1000 (one-thousand dollars) and / or modification, suspension, or revocation of the license. Suspension or revocation of the Business License will be reserved for serious or repeated violations. All suspensions or revocations are subject to a hearing upon request.

(g) For each termite treatment performed, the business licensed to perform structural pest control must record, on the Record of Termiticide Use form published by the Department or in a similar manner acceptable to the Department, at least the following information:

(1) The address of the structure and the nature of the treatment (e.g. pretreat, existing structure, retreatment due to infestation, bait installation).

(2) The applicator making the actual treatment and his license number if he is licensed.

(3) Whether an Official Waiver of Standards was issued.

(4) The brand name, quantity, and dilution rate of the termiticide applied, if applicable.

(5) The treatment technique (trenching, void treatment, pretreat, bait station installation, wood treatment, etc.)

(6) This information must be maintained by the business as detailed below:

(a) For pre-construction termite-control treatments ("pretreats"), including the installation of bait systems and baits containing active ingredients, records of termiticide application must be maintained for a period of five (5) years or as long as a continuing warranty or contract exists, whichever is longer, and must be made available to the Director or his designee for review and duplication upon request at the expense of the Department.

(b) For post-construction termite-control treatments, including the installation of bait systems and baits containing active ingredients, records of termiticide application must be maintained for a period of two (2) years from the date of application or as long as a continuing warranty or contract exists, whichever is longer, and must be made available to the Director or his designee for review and duplication upon request at the expense of the Department.

(h) If a DCA can no longer be present at a business location due to unforeseen circumstances, the business must appoint another applicator licensed in Category 7A and employed by the business to serve as DCA. If no new DCA is appointed within 30 (thirty) days of the departure of the previous DCA the Business License must be surrendered to the Department. The Business may petition the Director in writing for a "hardship" stay of the surrender of the Business License. The duration of the stay will be determined by the Director but in normal circumstances will not extend beyond the next available examination date. No structural pest control activities may be performed during the stay.

(2) Business licenses must be prominently displayed at each location.

(3) Each vehicle which transports pesticides used in structural pest control activities must display the appropriate Department, the business license number, and the company name. This information must be in letters one (1) inch in height or greater, on a contrasting background, and placed on each side on the front half and above the mid-line of the vehicle. If a vehicle is used at more than one location, it should bear the business license number of its primary location.

(4) All pest control personnel performing structural pest control activities must carry (not display) on their person an official identification card which demonstrates verifiable training in the area of pest control in which they operate and provides the business and appropriate commercial license number, technician's name, or other pertinent information, as designated by the department. This identification must be presented upon request, and failure to do so shall constitute a violation of this Section. The card shall remain the property of the Department and must be surrendered when the cardholder employment ceases. Office personnel who do not conduct inspections or apply pesticides are not subject to this provision.

(5) Warranty sales are prohibited unless exempted in writing by the Director. This does not preclude a company from reinstating an expired warranty or contract on a structure that it has previously treated.

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

Statement of Rationale: These amendments do not constitute a significant amendment to existing regulations and consequently no detailed statement of rationale is required.

Document No. 2941
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-26-10, *et seq* (2004)

43-205.1. Assisting, Developing, and Evaluating Professional Teaching (ADEPT)

Synopsis:

The State Department of Education (SDE) recommends that the State Board of Education propose amendments to Regulation 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT), to align the regulation with the recent amendments to the ADEPT statute (S.C. Code Ann. §§ 59-26-30 and 59-26-40, to be codified at Supp. 2004) and with current research and best practices.

The Notice of Drafting was published in the *State Register* June 25, 2004.

Section-by-Section Discussion

Section I. The term "performance standards" replaces the previous term "performance dimensions." Descriptions of the performance standards have been removed from the regulation and are now simply referenced there instead. The actual standards are to be placed in the State Board of Education's ADEPT implementation guidelines.

Section II. Pursuant to the ADEPT statutory amendments (July 2004), the term "teacher candidates" replaces the previous term "student teachers."

Section II.A. Language is amended to reflect current terminology.

Sections II.B.1.–7. have been deleted. The ADEPT procedural requirements relative to teacher candidates have been removed from the regulation and are now simply referenced there instead. The specific procedural requirements for teacher candidates are to be placed in the State Board of Education's ADEPT implementation guidelines.

Section B., as amended, contains requirements for teacher education program ADEPT plans.

Section II.C. has been added. This section requires teacher education programs to submit assurances on *July 1* annually to the SDE that they are complying with the State Board of Education's ADEPT implementation guidelines.

Section II.D. has been added. This section describes reporting requirements and related ADEPT funding.

Section II.E. has been added. This section transfers language from (former) Section II.B.7. regarding the provision of SDE assistance to teacher education programs.

Section III.

Section III.A. The "152-day" requirement has been removed from this section and placed in a later section of the regulation (Section IX.) that deals with "Teachers Employed Under a Letter of Agreement."

Sections III.B.1.–9. have been deleted. The ADEPT procedural requirements relative to induction-contract teachers have been removed from the regulation and are now simply referenced there instead. The specific procedural requirements for induction are to be placed in the State Board of Education's guidelines for assisting induction-contract teachers.

Section III.B., as amended, contains amended language regarding requirements for school district induction plans.

Section III.C. The provisions of this section have been moved to (amended) Section III.D. Section III.C., as amended, describes employment and eligibility provisions for induction contract teachers (formerly contained in Section III.E).

Sections III.D.–F. have been deleted. The requirements for teacher induction have been removed from the regulation and are to be placed in the State Board of Education's ADEPT implementation guidelines.

Section III.D., as amended, describes school district reporting requirements for ADEPT funding (formerly contained in Section III.C.). The November 1 deadline has been removed; the reporting date will be determined annually by the SDE.

Section III.E., as amended, transfers language from (former) Section III..H. regarding district plans for induction teachers. The amended language requires school districts to submit annual assurances to the SDE that they are complying with the State Board of Education guidelines for assisting induction-contract teachers. A copy of the district's proposed induction timeline must accompany the assurances.

Section III.F., as amended, clarifies end-of-year induction teacher reporting requirements for school districts.

Section III.G., as amended, provides SDE assistance to school districts. Requirements for district induction plans have been moved to (amended) Section III.E.

Section IV. Pursuant to the ADEPT statutory amendments (July 2004), the section on provisional-contract teachers (Section IV.) has been deleted from the regulation.

Section IV., as amended, contains requirements for annual-contract teachers (formerly Section V.).

Section V. Section V. (Annual-Contract Teachers) has become amended Section IV.

Section IV.A., as amended, removes the procedural rights of annual-contract teachers from the regulation and simply references them instead. The specific procedural rights of annual-contract teachers are contained in the referenced statute.

Sections V.B.1.–10. have been removed from the regulation and are now simply referenced there instead (amended Section. IV.B.). The specific procedural requirements for formal evaluation are to be placed in the State Board of Education's ADEPT implementation guidelines.

Section V.C. The technical specifications for formal evaluation processes have been moved to amended Section IV.D.

Section IV.C., as amended, requires that teachers not be employed under an annual contract for more than four years, pursuant to the ADEPT statutory amendments (July 2004).

Section IV.D., as amended, adds definitions for the terms "formal performance evaluation" and "diagnostic assistance." Technical specifications for formal evaluation processes (moved from former Section V.C.) are included in this section.

Section IV.D.1., as amended, describes requirements for advancement to the continuing-contract level.

Section IV.D.2., as amended, adds the provision for teachers who have successfully completed a formal evaluation at the annual-contract level but who have not yet met all requirements for the professional teaching certificate to be evaluated either formally or informally (i.e., goals-based), at the discretion of the school district, during subsequent annual-contract years.

Section IV.D.3., as amended, includes provisions for teachers who fail to meet requirements at the annual contract level. Pursuant to the ADEPT statutory amendments (July 2004), language is added to provide for, and to further describe, a diagnostic-assistance year at the annual-contract level.

Section IV.D.4., as amended, describes state-imposed sanctions for annual-contract teachers who do not meet the formal evaluation criteria for the second time.

Section IV.E., as amended, contains amended language regarding requirements for school district ADEPT plans for annual-contract teachers.

Section IV.F., as amended, requires school districts to establish criteria for successfully completing the annual contract year. These criteria must include, but need not be limited to, the State Board of Education's formal evaluation requirements and eligibility for the professional teaching certificate.

Sections IV.G.–I., as amended, clarify requirements for district reporting and include the provision for SDE technical assistance.

Section VI. Section VI. (Continuing-Contract Teachers) has become amended Section V.

Section V.A., as amended, clarifies that teachers must meet the requirements for a professional teaching certificate before becoming eligible for employment under a continuing contract, pursuant to the ADEPT statutory amendments (July 2004).

Section V.B., as amended, clarifies that teachers employed under continuing contracts must be evaluated on a continuous basis. Continuing-contract teachers must receive written notification no later than April 15 (a change from the previous May 15 requirement) if they are being recommended for formal evaluation for the following year. Additional requirements regarding the content of the notification are included.

Section V.C., as amended, specifies requirements for district ADEPT plans for continuing-contract teachers.

Sections VI.D.1.–10, Section E., and Sections F.1.–5. have been removed from the regulation and are now simply referenced there instead. The specific procedural requirements for (formally and informally) evaluating continuing-contract teachers are to be placed in the State Board of Education's ADEPT implementation guidelines.

Section V.D., as amended, specifies requirements for district ADEPT plans for continuing-contract teachers.

Section VI.G. (amended Section V.E.) specifies requirements for end-of-year reporting on continuing contract teachers by school districts.

Section VI.H. (amended Section V.E.) includes the provision for SDE technical assistance. Specifications for ADEPT plans have been moved to amended Section V.D.

Section VII. The contents of Section VII. (Teachers Employed from Out of State) have been moved to amended Section VII.

Section VI., as amended, clarifies provisions for an "incomplete" ADEPT evaluation.

Section VII. Language is added to address ADEPT requirements for teachers entering the public schools from nonpublic-school settings.

Section VIII. Language is updated to reflect current terminology. For clarification purposes, requirements for career and technology education teachers, candidates pursuing alternative routes to teacher certification (formerly Section X.), and teachers employed on a part-time basis (formerly Section IX.) are combined into the same section.

Section IX. The contents of this section have been moved to Section VIII.

Section IX., as amended, describes provisions for districts to employ teachers under letters of agreement.

Section X. The contents of this section have been moved to Section VIII.

Section X., as amended, adds language to address ADEPT requirements for teachers who hold international teaching certificates.

Section XI. This new section adds language to address the application of the ADEPT process to teachers employed in charter schools.

Section XII. This new section adds state sanctions for teacher education programs and school districts who fail to report ADEPT information to the SDE.

Instructions: Amend in its entirety R 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT), to Chapter 43 regulations

Text:

205.1. Assisting, Developing, and Evaluating Professional Teaching (ADEPT)

I. State Standards for Professional Teaching

Teacher preparation programs and school districts must address, but are not limited to, the performance standards for Assisting, Developing, and Evaluating Professional Teaching (ADEPT), as specified in the State Board of Education's ADEPT implementation guidelines.

II. Teacher Candidates

A. All teacher education programs must adhere to State Board of Education regulations governing the preparation and evaluation of teacher candidates.

B. Each teacher education program must develop and implement a plan for preparing, evaluating, and assisting prospective teachers relative to the ADEPT performance standards in accordance with the State Board of Education's ADEPT implementation guidelines. ADEPT plans must be approved by the State Board of Education prior to implementation.

C. By July 1 of each year, teacher education programs must submit assurances to the State Department of Education (SDE) that they are complying with the State Board of Education's ADEPT implementation guidelines. Proposed amendments to previously approved ADEPT plans must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

D. Teacher education programs must submit information on their teacher candidates, as requested annually by the SDE. This information will be used to provide flow-through funds to teacher education programs.

E. The SDE will provide teacher education programs with ongoing technical assistance such as training, consultation, and advisement, upon request.

III. Induction-Contract Teachers

A. Teachers who possess a valid South Carolina teaching certificate and have less than one year of public school teaching experience may be employed under a one-year nonrenewable induction contract. The employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under induction contracts.

B. Each local school district must develop and implement a plan to provide induction-contract teachers with comprehensive guidance and assistance throughout the school year. District induction plans must comply with the State Board of Education's guidelines for assisting induction-contract teachers and must be approved by the State Board of Education prior to implementation.

C. Teachers employed under induction contracts are to be notified in writing by April 15 concerning their employment status for the next school year. Teachers who complete the induction-contract year may, at the discretion of the school district, either be employed under an annual contract or be released from employment. Teachers who are released may seek employment in another school district at the annual-contract level.

D. School districts must submit information on all teachers employed under induction contracts, as requested annually by the SDE. This information will be used to provide flow-through funds to school districts.

E. By May 1 of each year, school districts must submit assurances to the SDE that they are complying with the State Board of Education's ADEPT implementation guidelines for assisting induction-contract teachers. A copy of the district's proposed induction timeline must accompany the assurances. Proposed amendments to the district's previously approved induction plan must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

F. By June 20 of each year, school districts must submit end-of-year information on teachers employed under induction contracts and on the employment contract decisions made for the following year, as requested by the SDE.

G. The SDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

IV. Annual-Contract Teachers

A. Teachers who have completed an induction-contract year may be employed under an annual contract. Full procedural rights under the employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under annual contracts. However, annual-contract teachers do have the right to an informal hearing before the district superintendent, under the provisions of S.C. Code Ann. § 59-26-40 (2004).

B. Teachers employed under an annual contract must be evaluated or assisted with procedures developed or adopted by the local school district in accordance with the State Board of Education's ADEPT implementation guidelines. These procedures must include the development, implementation, and evaluation of an individualized professional growth plan for each teacher.

C. Teachers must not be employed under an annual contract for more than four years.

D. During the first annual-contract year, the annual-contract teacher must, at the discretion of the school district, either undergo a formal performance evaluation or be provided with diagnostic assistance. The term "formal performance evaluation" is defined as a summative evaluation of teaching performance relative to the state standards and evaluation processes, as specified in the State Board of Education's ADEPT implementation guidelines. All formal evaluation processes must meet the general technical criteria of validity,

reliability, maximum freedom from bias, and documentation. The term "diagnostic assistance" is defined as an optional process for providing individualized support to teachers who have demonstrated potential but who are not yet ready to successfully complete a formal performance evaluation.

1. An annual-contract teacher who has met the formal evaluation criteria set by the State Board of Education, the requirements for annual-contract teachers set by the local board of trustees, and the requirements established by the State Board of Education for the professional teaching certificate is eligible for employment at the continuing-contract level. At its discretion, the district may either employ the teacher under a continuing contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district. At the discretion of the next hiring district, the teacher may be employed at the annual or continuing-contract level.

2. An annual-contract teacher who has met the formal evaluation criteria set by the State Board of Education and the requirements set by the local board of trustees but who has not yet satisfied all requirements established by the State Board of Education for the professional teaching certificate is eligible for employment under a subsequent annual contract, with evaluation being either formal or informal (i.e., goals-based), at the discretion of the local school district. At its discretion, the district may either employ the teacher under an annual contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district at the annual-contract level.

3. An annual-contract teacher who for the first time fails to meet the formal evaluation criteria set by the State Board of Education or who fails to meet the requirements set by the local board of trustees is eligible for employment under a subsequent annual contract. At its discretion, the district may either employ the teacher under an annual contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district at the annual-contract level.

An annual-contract teacher who has demonstrated potential but who has not yet met the formal evaluation criteria set by the State Board of Education and/or the requirements set by the local board of trustees is eligible for a diagnostic-assistance year at the annual-contract level. This diagnostic-assistance year must be provided, if needed, at the discretion of the employing school district, either during the teacher's first annual-contract year or during the annual-contract year following the teacher's first unsuccessful formal evaluation. A teacher is eligible to receive only one diagnostic-assistance year.

4. An annual-contract teacher who for the second time fails to meet the formal evaluation criteria set by the State Board of Education will have his or her teaching certificate automatically suspended by the State Board of Education, as prescribed in Section 59-5-60 of the South Carolina Code of Laws, 1976, and in State Board of Education Regulation 43-58. Subsequent to this action, the teacher will be ineligible to be employed as a classroom teacher in a public school in this state for a minimum of two years. Before reentry into the profession, the teacher must complete a state-approved remediation plan based on the area(s) that were identified as deficiencies during the formal evaluation process. Remediation plans must be developed and implemented in accordance with the State Board of Education's ADEPT implementation guidelines.

Following the minimum two-year suspension period and the completion of the remediation plan, as verified by the SDE, the teacher's certificate suspension will be lifted, and the teacher will be eligible for employment at the annual-contract level. Upon his or her reentry into the profession, the teacher must be formally evaluated. If, at the completion of the evaluation process, the teacher meets the formal evaluation criteria set by the State Board of Education, he or she may continue toward the next contract level. If, at the completion of the evaluation process, the teacher does not meet the formal evaluation criteria set by the State Board of Education, he or she is no longer eligible to be employed as a public school teacher in this state.

E. Each school district must develop a plan to evaluate and provide diagnostic assistance to teachers at the annual-contract level, in accordance with the State Board of Education's ADEPT implementation guidelines. District plans also must include procedures for developing, implementing, and evaluating individualized professional growth plans for annual-contract teachers.

F. School districts must establish criteria or requirements that teachers must meet at the annual-contract level. At a minimum, districts must require annual-contract teachers to meet the ADEPT formal evaluation criteria and all other requirements for the professional teaching certificate, as specified by the State Board of Education, in order to advance to the continuing-contract level.

G. By May 1 of each year, school districts must submit assurances to the SDE that they are complying with the State Board of Education's ADEPT implementation guidelines for evaluating and assisting teachers at the annual-contract level. A copy of the district's proposed formal evaluation and diagnostic assistance timelines must accompany the assurances. Proposed amendments to the district's previously approved ADEPT plan for annual-contract teachers must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

H. By June 20 of each year, school districts must submit end-of-year information on teachers employed under annual contracts and on the employment contract decisions made for the following year, as requested by the SDE.

I. The SDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

V. Continuing-Contract Teachers

A. Teachers who have met the formal evaluation criteria set by the State Board of Education, the requirements for annual-contract teachers set by the local board of trustees, and the requirements established by the State Board of Education for the professional teaching certificate are eligible for employment at the continuing-contract level. Teachers employed under continuing contracts have full procedural rights relating to employment and dismissal as provided for in Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws.

B. Teachers employed under continuing contracts must be evaluated on a continuous basis. The evaluation may be formal or informal (i.e., goals-based), at the discretion of the district. Districts must develop policies for recommending continuing-contract teachers for formal evaluation. Continuing-contract teachers who are being recommended for formal evaluation the following school year must be notified in writing no later than April 15. The written notification must include the reason(s) that a formal evaluation is recommended, as well as a description of the formal evaluation process. Continuing-contract teachers who are new to the district must be advised at the time of their hiring if they are to receive a formal evaluation.

C. Each school district must develop a plan, in accordance with State Board of Education's ADEPT implementation guidelines, to continuously evaluate teachers who are employed under continuing contracts. At a minimum, district ADEPT plans for continuing-contract teachers must address formal and informal evaluations and individualized professional growth plans.

D. By May 1 of each year, school districts must submit assurances to the SDE that they are complying with the State Board of Education's ADEPT implementation guidelines for continuously evaluating teachers at the continuing-contract level. A copy of the district's proposed formal and informal evaluation timelines must accompany the assurances. Proposed amendments to the district's previously approved ADEPT plan for continuing-contract teachers must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

E. By June 20 of each year, school districts must submit end-of-year information on teachers employed under continuing contracts and on the employment decisions made for the following year, as requested by the SDE.

F. The SDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

VI. Teachers Who Do Not Have Sufficient Opportunity to Complete the ADEPT Process

A. A teacher who is employed under an induction, annual, or continuing contract and who is absent for more than 20 percent of the days in the district's SBE-approved annual evaluation cycle may, at the recommendation of the district superintendent, have his or her ADEPT results reported to the SDE as "incomplete."

B. Teachers whose ADEPT results are reported to the SDE as "incomplete" are eligible to repeat their contract level during the next year of employment.

VII. Teachers Employed from Out of State or from a Nonpublic-School Setting

A. Certified teachers employed from out of state or from a nonpublic-school setting who have less than one year of teaching experience are eligible for employment under an induction contract.

B. Certified teachers who are employed from out of state or from a nonpublic-school setting and who have one or two years of teaching experience are eligible for employment under an induction or an annual contract, at the discretion of the school district. At the annual-contract level, teachers may receive either a diagnostic-assistance year or a formal evaluation. Teachers must meet all requirements for the professional certificate, including successful completion of a full formal evaluation at the annual-contract level, before they are eligible to receive a continuing contract.

C. Certified teachers who are employed from out of state or from a nonpublic-school setting and who have more than two years of teaching experience are eligible for employment under an annual contract. During their first year of employment in a South Carolina public school, these teachers may, at the discretion of the school district, receive either a diagnostic-assistance year or a formal evaluation. Teachers who undergo formal evaluation and who, at the conclusion of the preliminary evaluation period, meet the formal evaluation criteria set by the State Board of Education may, at the discretion of the school district, have the final portion of the formal evaluation process waived. Teachers must meet all requirements for the professional certificate, including successful completion of a full formal evaluation at the annual-contract level, before they are eligible to receive a continuing contract.

D. Teachers who are employed from out of state or from a nonpublic-school setting and who are certified by the National Board for Professional Teaching Standards (NBPTS) are exempted from initial certification requirements and are eligible for continuing contract status (S.C. Code Ann. § 59-26-85).

VIII. Career and Technology Education Teachers, Candidates Pursuing Alternative Routes to Teacher Certification, and Teachers Employed on a Part-Time Basis

A. Teachers certified under the Career and Technology Education certification process must follow the same sequence as traditionally prepared teachers in terms of contract levels (i.e., induction, annual, and continuing) and ADEPT evaluation and assistance processes.

B. Candidates pursuing alternative routes to teacher certification must follow the same sequence as traditionally prepared teachers in terms of contract levels (i.e., induction, annual, and continuing) and ADEPT evaluation and assistance processes.

C. Teachers who are employed part-time and who receive a teaching contract (i.e., induction, annual, or continuing) must participate in the ADEPT evaluation and assistance processes.

IX. Teachers Employed under a Letter of Agreement

A. Teachers who are eligible for an induction or an annual contract but who are hired on a date that would cause their period of employment to be less than 152 days during the school year may be employed under a letter of agreement.

B. Teachers employed under a letter of agreement do not fall under ADEPT. However, districts must ensure that these teachers receive appropriate assistance and supervision throughout the school year.

C. The employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under a letter of agreement.

X. Teachers Who Hold an International Teaching Certificate

A. Teachers from outside the United States who hold an international teaching certificate must follow the same sequences as traditionally prepared teachers in terms of the beginning contract levels (i.e., induction and annual) and ADEPT evaluation and assistance processes.

B. Teachers from outside the United States who hold an international teaching certificate may remain at the annual-contract level but may not be employed under a continuing contract.

XI. Teachers Employed in Charter Schools

A. Except as otherwise provided in the Charter Schools Act (S.C. Code Ann. § 59-40-50(A) (2004)), charter schools are exempt from all provisions of law and regulations applicable to a public school, a school board, or a district. However, a charter school may elect to comply with one or more of these provisions of law or regulations, such as the provisions of the ADEPT statute and regulation.

B. Charter schools that elect not to implement the ADEPT system may assist and/or evaluate their teachers according to the policies of their respective charter school committees. Certified teachers in these schools will accrue experience credit in a manner consistent with the provisions of State Board of Education Regulation 43-57 (24 S.C. Code Ann. Regs. 43-57 (1976)). However, teachers in non-ADEPT charter schools who hold an initial teaching certificate are not eligible to advance to a professional certificate. In these instances, the initial certificate may be extended indefinitely, provided that the administrator of the charter school requests the extension in writing on an annual basis from the Office of Teacher Certification. Such requests will be granted provided that the teacher has met the certificate renewal requirements as specified in State Board of Education Regulation 43-55 (24 S.C. Code Ann. Regs. 43-55 (Supp. 2003)).

C. Charter schools that elect to implement the ADEPT system must comply with all provisions of the amended ADEPT statute (S.C. Code Ann. §§ 59-26-30 and 59-26-40, to be codified at Supp. 2004), this regulation, and the State Board of Education's ADEPT implementation guidelines. In fulfilling these requirements, the contract between the charter school and its sponsor (i.e., the local school district) must include an ADEPT provision. All certified teachers in the charter school must be placed under an induction, annual, or continuing contract, as appropriate, and must be assisted and evaluated in a manner consistent with the school district's State Board of Education-approved ADEPT plan. The ADEPT provision must address the charter school's responsibilities for ensuring the fidelity of the implementation of the ADEPT system. The provision also must address the district's responsibilities in terms of staff training and program implementation. At a minimum, the district must agree to disseminate all ADEPT-related information from the SDE to the charter school and to report charter school teacher data to the SDE. The provision must be included in the sponsor district's ADEPT plan and approved by the State Board prior to implementation.

XII. Reporting Requirements

Failure of a teacher education program or local school district to submit all required assurances or requested information pursuant to this regulation may result in the State Board of Education's withholding ADEPT funds.

Fiscal Impact Statement: None

Statement of Rationale: The proposed amendments align the ADEPT regulation with the recent amendments to the ADEPT statue (S.C. Code Ann. § 59-26-30 and § 59-26-40, to be codified at Supp. 2004 and with current research and best practices.

Document No. 2940
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-5-60 (2004) and 20 U.S.C § 6301 *et seq.* (2002)

43-205. Administrative and Professional Personnel Qualifications, Duties, and Workloads

Synopsis:

The State Department of Education recommends that the State Board of Education propose amendments to R 43-205, Administrative and Professional Personnel Qualifications, Duties, and Workloads to add further qualifications for teachers as required by the federal No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.* (2002) and to align with regulations and guidelines as well as to reflect current terminology.

The Notice of Drafting was published in the *State Register* on June 25, 2004.

Section-by-Section Discussion

Section I Format and wording changes are made to reflect current terminology and preferred usage.

Section II.A. New language is inserted to add the qualifications for teachers required by the federal No Child Left Behind Act. Format and wording changes are made to reflect current terminology and preferred usage.

Section II.B. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section III.A. New language is inserted to add the qualifications for teachers required by the federal No Child Left Behind Act. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section III.B. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section III.C. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section IV.A. New language is inserted to add the qualifications for teachers required by the federal No Child Left Behind Act. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section IV.B. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Section IV.C. Format and wording changes are made to align with current regulations and guidelines as well as to reflect current terminology and preferred usage.

Instructions: Amend in its entirety R 43-205, Administrative and Professional Personnel Qualifications, Duties, and Workloads, to Chapter 43 regulations.

Text:

R 43-205. Administrative and Professional Personnel Qualifications, Duties, and Workloads

I. District Level Administrative Personnel

Personnel employed as administrative assistants, supervisors, and consultants having responsibilities for supervising instructional programs and student services must hold a master's degree and be certified in their area of primary responsibility or must earn a minimum of 6 semester hours annually toward appropriate certification. The district superintendent must request from the Office of Certification an out-of-field permit for members of the central staff who are not properly certified.

II. Prekindergarten through Grade Five

A. Professional Personnel Qualifications and Duties

1. Principals

Each school with an enrollment of more than 375 students must be staffed with a full-time properly certified principal. Each school with an enrollment of fewer than 375 students must be staffed with at least a part-time properly certified principal. A principal's duties and responsibilities are to be prescribed by the district superintendent. The district superintendent must request an out-of-field permit from the Office of Certification for each principal who is not properly certified.

2. Assistant Principals or Curriculum Coordinators

Each school with an enrollment of 600 or more students must be staffed with at least one full-time properly certified assistant principal or curriculum coordinator.

3. Teachers, Guidance Counselors, and Library Media Specialists

Each teacher, guidance counselor, and library media specialist must be properly certified by the State Board of Education. Additionally, teachers of core academic subjects must meet the "highly qualified" teacher requirements specified in the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.* (2002). The core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics, government, economics, history, geography, and the arts. Core academic subject teachers in Title I schools and Title I targeted assistance programs must have met the "highly qualified" requirements at the time of hiring; all other core academic subject teachers must meet the "highly qualified" requirements by the conclusion of the 2005–06 school year. The duties and responsibilities of teachers, guidance counselors, and library media specialists are to be prescribed by the school principal. The district superintendent must request an out-of-field permit from the Office of Certification for each eligible teacher, guidance counselor, and library media specialist who is not properly certified.

4. School Nurses

Each school nurse must hold a current license issued by the State Board of Nursing to practice as a professional registered nurse or as a licensed practical nurse who is working under the supervision of a professional registered nurse. The duties and responsibilities of a school nurse are to be prescribed by the principal in accordance with the laws and regulations governing nursing in South Carolina. If a school nurse works in more than one school, his or her duties and responsibilities are to be prescribed by the district superintendent or his or her designee in accordance with the laws and regulations governing nursing in South Carolina.

B. Professional Personnel Workload

1. General Education Teachers

(a) The average student-teacher ratio in any school must not exceed 28:1 based on average daily enrollment. The total number of teachers must include all regular, special area, and resource teachers whose students are counted in the regular enrollment.

(b) Each district must maintain an average student-teacher ratio of 21:1 based on average daily enrollment in reading and mathematics classes in grades one through three.

(c) Class sizes must not exceed the following student-teacher ratios:

Grade Level	Maximum Student-Teacher Ratio
Prekindergarten	20:1
Grades K–3	30:1
Grades 4–5 English/language arts and mathematics	30:1
Grades 4–5 All other subjects	35:1

(d) Paraprofessionals may be counted in computing the student-teacher ratio at the rate of .5 per paraprofessional if they work under the supervision of a teacher and make up no more than 10 percent of the total staff. Excluded from the computation are the following:

(1) teachers of self-contained special education classes, prekindergarten and kindergarten classes, principals, assistant principals, library media specialists, and guidance counselors; and

(2) students in self-contained special education classes, prekindergarten classes, or kindergarten classes.

2. Guidance Counselors and Specialists in Art, Music, and Physical Education

(a) Schools having any combination of grades one through five must employ the full-time equivalent (FTE) of a school guidance counselor and specialists in art, music, and physical education (PE) in the following ratios for each area.

Average Daily Enrollment	FTE	Minimum Alloted Time Daily
800 or more	1.0	300 minutes
640–799	.8	240 minutes
480–639	.6	180 minutes
320–479	.4	120 minutes
Less than 320	.2	60 minutes

(b) Music teachers may teach a maximum of 40 students per class period. The total teaching load must not exceed 240 students per day. Exceptions: When band, chorus, and orchestra require rehearsals of their entire enrollment, any number is acceptable if adequate space is available.

(c) PE teachers may teach a maximum of 40 students per class period. The total teaching load must not exceed 240 students per day. If PE and health are taught on alternate days to the same class, the 40-student maximum and 240-student total are also permitted for health. When health is taught as a separate subject, the teaching load is a maximum of 35 students per period and a total of 150 students per day.

3. Library Media Specialists

Schools with fewer than 375 students must provide at least half-time services of a certified library media specialist. Schools with 375 or more students must provide the services of a full-time certified library media specialist.

4. Special Education Teachers

(a) The teaching load for teachers of self-contained special education classes must not exceed the following student-teacher ratios

Area	Maximum Ratio Based on Average Daily Enrollment
Mental Disabilities (includes educable and trainable)	15:1
Emotional Disabilities	12:1
Learning Disabilities	15:1
Severe Disabilities (includes orthopedically impaired)	12:1
Visually Impaired	10:1
Deaf and Hard of Hearing	10:1

(b) The maximum teaching load required for resource teachers and itinerant teachers for students with disabilities based on average daily enrollment is as follows

Area	Maximum Teaching Load
Mental Disabilities (includes educable and trainable)	33
Emotional Disabilities	33
Learning Disabilities	33
Severe Disabilities (includes orthopedically impaired)	20

Visually Impaired	15
Deaf and Hard of Hearing	15

(c) When resource teachers and/or itinerant teachers serve students with differing disabilities, the maximum teaching load must be determined by the majority of the students in enrollment in an area of disability.

(d) The maximum continuous caseload for speech language therapists must not exceed 60 students.

III Grades Six through Eight

A. Professional Personnel Qualifications and Duties

1. Principals

(a) Each school with an enrollment of 250 students or more must employ a full-time properly certified principal. Schools with fewer than 250 students in enrollment must be staffed with at least a half-time properly certified principal. A principal's duties and responsibilities are to be prescribed by the district superintendent. The district superintendent must request an out-of-field permit from the Office of Certification for each principal who is not properly certified.

(b) Each campus principal of a multicampus school with an enrollment of 250 students or more must comply with certification regulations prescribed for a principal of a single campus school.

2. Assistant Principals/Assistant Directors or Curriculum Coordinators

In addition to employing a full-time principal, each school with an enrollment of 500 or more students must be staffed with one full-time properly certified assistant principal or curriculum coordinator. An additional properly certified assistant principal or curriculum coordinator must be employed for a school with an enrollment of 1,000 or more.

3. Teachers, Guidance Counselors, and Library Media Specialists

Each teacher, guidance counselor, and library media specialist must be properly certified by the State Board of Education. Additionally, teachers of core academic subjects must meet the "highly qualified" teacher requirements specified in the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.* (2002). The core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics, government, economics, history, geography, and the arts. Core academic subject teachers in Title I schools and Title I targeted assistance programs must have met the "highly qualified" requirements at the time of hiring; all other core academic teachers must meet the "highly qualified" requirements by the conclusion of the 2005–06 school year. The duties and responsibilities of teachers, guidance counselors, and library media specialists are to be prescribed by the school principal. The district superintendent must request an out-of-field permit from the Office of Certification for each eligible teacher, guidance counselor, and library media specialist who is not properly certified.

4. School Nurses

Each school nurse must hold a current license issued by the State Board of Nursing to practice as a professional registered nurse or as a licensed practical nurse who is working under the supervision of a professional registered nurse. The duties and responsibilities of a school nurse are to be prescribed by the principal in accordance with the laws and regulations governing nursing in South Carolina. If a school nurse works in more than one school, his or her duties and responsibilities are to be prescribed by the district superintendent or his or her designee in accordance with the laws and regulations governing nursing in South Carolina.

B. Professional Personnel Workload

1. Guidance Counselors

(a) Schools with fewer than 600 students must provide the services of a guidance counselor in the following ratios:

Enrollment	Minimum Allotted Time Daily
Up to 200	100 minutes
201– 300	150 minutes
301– 400	200 minutes
401– 500	250 minutes
501–600	300 minutes

(b) Schools with an enrollment of 501 or more must employ one full-time certified counselor. Schools with more than 600 students must provide guidance services at the ratio of one 50-minute period for each 100 students or major portion thereof.

2. Library Media Specialists

(a) Schools with fewer than 400 students must employ a library media specialist who devotes not less than 200 minutes daily to library services.

(b) Schools with an enrollment of 400 or more students must employ a certified library media specialist devoting full time to library services.

(c) Schools having an enrollment of 750 or more must employ an additional full-time person (paraprofessional or certified library media specialist) in the library.

3. Classroom Teachers

(a) The maximum teaching load must not exceed 150 students daily. No class shall exceed 35 students in enrollment.

Grade Level		Maximum Student-Teacher Ratio
Grade 6	English/language arts and mathematics	30:1
Grade 6	All other Subjects	35:1
Grades 7–8		35:1

(b) A maximum of 40 students per class with a total teaching load of 240 students per day is permitted for music and physical education teachers. If physical education and health are taught on alternate days to the same class, the 40-student maximum and 240-student total are also permitted for health. When health is taught as a separate subject, the teaching load is a maximum of 35 students per class and a total of 150 students per day. Exceptions: When band, chorus, and orchestra will require rehearsals of the entire enrollment, any number is acceptable if adequate space is available.

(c) When a teacher's daily schedule includes a combination of academic subjects and nonacademic subjects, the maximum daily teaching load must be calculated on the basis of 30 students per academic class and 40 students for each music or physical education class. (Example: 3 classes of math with 30 students each = 90 + 2 classes of physical education with 40 students each = 80The teaching load totals 170 students. The teacher is not overloaded but teaches maximum allowable.)

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

4. Special Education Teachers

(a) The teaching load for teachers of self-contained classes must not exceed the following student-teacher ratios:

Area	Maximum Ratio Based on Average Daily Enrollment
Mental Disabilities (includes educable and trainable)	18:1
Emotional Disabilities	15:1
Learning Disabilities	18:1
Severe Disabilities (includes orthopedically impaired)	15:1
Visually Impaired	12:1
Deaf and Hard of Hearing	12:1

(b) The maximum teaching load for resource teachers and itinerant teachers for students with disabilities based on average daily enrollment is as follows:

Area	Maximum Teaching Load
Mental Disabilities (includes educable and trainable)	33 students
Emotional Disabilities	33 students
Learning Disabilities	33 students
Severe Disabilities (includes orthopedically impaired)	20 students
Visually Impaired	15 students
Deaf and Hard of Hearing	15 students

(c) When resource teachers and/or itinerant teachers serve students with differing disabilities, the maximum caseload must be determined by the majority of the students in enrollment in an area of disability.

(d) The maximum continuous caseload for speech–language therapists must not exceed 60 students.

IV. Grades Nine through Twelve

A. Professional Personnel Qualifications and Duties

1. Principals/Directors

(a) Each school must be staffed with a full-time properly certified principal/director whose duties and responsibilities must be prescribed by the district superintendent. The district superintendent must request an out-of-field permit from the Office of Certification for each principal/director who is not properly certified.

(b) Each campus principal of a multicampus school with an enrollment of 250 students or more must comply with certification regulations prescribed for a principal of a single-campus school.

2. Assistant Principals/Assistant Directors or Curriculum Coordinators

(a) In addition to being staffed with a full-time principal/director, each school with an enrollment of 400–499 students must be staffed with at least one half-time properly certified assistant principal or equivalent.

(b) In addition to being staffed with a full-time principal/director, each school with an enrollment of 500 or more students must be staffed with at least one full-time properly certified assistant principal/assistant director and a properly certified assistant principal or the equivalent for each additional 500 students.

3. Teachers, Guidance Counselors, and Library Media Specialists

Each teacher, guidance counselor, and library media specialist must be properly certified by the State Board of Education. Additionally, teachers of core academic subjects must meet the "highly qualified" teacher requirements specified in the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.* (2002). The core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics, government, economics, history, geography, and the arts. Core academic subject teachers in the Title I schools and Title I targeted assistance programs must have met the "highly qualified" requirements at the time of hiring; all other core academic teachers must meet the "highly qualified" requirements by the conclusion of the 2005–06 school year. Their duties and responsibilities are to be prescribed by the principal. The district superintendent must request an out-of-field permit from the Office of Certification for each eligible teacher, guidance counselor, and library media specialist who is not properly certified.

4. School Nurses

Each school nurse must hold a current license issued by the State Board of Nursing to practice as a professional registered nurse or as a licensed practical nurse who is working under the supervision of a professional registered nurse. The duties and responsibilities of a school nurse are to be prescribed by the principal in accordance with the laws and regulations governing nursing in South Carolina. If a school nurse works in more than one school, his or her duties and responsibilities are to be prescribed by the district superintendent or his or her designee in accordance with the laws and regulations governing nursing in South Carolina.

5. School-to-Work Transition Coordinators

When a School-to-Work transition coordinator is employed, the coordinator must be certified in one or more occupational subjects, have at least a bachelor's degree, and have two years' work experience. In lieu of the above requirements, a qualified person with an employment background in business or industry may be employed as a School-to-Work coordinator if the person possesses at least a bachelor's degree and five

years of business/industry work experience in the fields of personnel or administration.

6. Career Specialists

When a career specialist is employed, the career specialist must have a strong orientation toward human-resource needs in business and industry, must hold a minimum of a bachelor's degree, and must have at least three years of appropriate work experience. If this person is to provide classroom instruction, he or she must be certified.

B. Professional Personnel Workload

1. Guidance Counselors

(a) Schools with fewer than 600 students must provide the services of a guidance counselor in the following ratios:

Enrollment	Minimum Allotted Time Daily
Up to 200	100 minutes
201– 300	150 minutes
301– 400	200 minutes
401– 500	250 minutes
501– 600	300 minutes

(b) Schools with enrollments of 501 or more must employ one full-time certified counselor. Schools with more than 600 students must provide guidance services at the ratio of 50 minutes for each additional 51–100 students to the extent that the total school enrollment reflects a minimum of 50 minutes of guidance services for each 100 students.

2. Library Media Specialists

(a) Schools having an enrollment of fewer than 400 students must employ a library media specialist who must devote not less than 200 minutes daily to media services.

(b) Schools with an enrollment of 400 or more students must employ a certified library media specialist devoting full time to library services.

(c) Schools having an enrollment of 750 or more students must employ an additional full-time person (paraprofessional or certified library media specialist) in the library.

3. Classroom Teachers

(a) The maximum daily teaching load for academic classes is 150 students. No class must exceed 35 students in enrollment.

(b) A teacher must not be permitted to teach more than 1,500 minutes per week.

(c) A teacher must not be assigned classes requiring more than four preparations per day.

(d) A maximum of 40 students per class with a total teaching load of 240 students per day is permitted for music and physical education teachers. If physical education and health are taught on alternate days to the same class, the 40-student maximum and 240-student total are also permitted for health. When health is taught as a separate subject, the teaching load is a maximum of 35 students per class and a total of 150 students per day. Exception: When band, chorus, and orchestra will require rehearsals of the entire enrollment, any number is acceptable if adequate space is available.

(e) When a teacher's daily schedule includes a combination of academic and nonacademic subjects, the maximum daily teaching load must be calculated on the basis of 30 students per academic class and 40 students per music or physical education class (Example: 3 classes of math with 30 students each = 90 + 2 classes of physical education with 40 students each = 80. The teaching load totals 170 students. The teacher is not overloaded but does teach maximum allowable.)

(f) In calculating teaching load, the number of students supervised in study hall by a regular teacher must be divided by 4. (Example: 60 divided by 4 = 15). Study hall students must not be placed in an instructional class.

4. Special Education Teachers

(a) The teaching load for teachers of self-contained classes must not exceed the following student-teacher ratios

Area	Maximum Ratio Based on Average Daily Enrollment
Mental Disabilities (includes educable and trainable)	18:1
Emotional Disabilities	15:1
Learning Disabilities	8:1
Severe Disabilities (includes orthopedically impaired)	15:1
Visually Impaired	12:1
Deaf and Hard of Hearing	12:1

(b) The maximum teaching load for resource teachersand itinerant teachers for students with disabilities based on average daily enrollment is as follows:

Area	Maximum Teaching Load
Mental Disabilities (includes educable and trainable)	33 students
Emotional Disabilities	33 students
Learning Disabilities	33 students
Severe Disabilities (includes orthopedially impaired)	20 students
Visually Impaired	15 students
Deaf and Hard of Hearing	15 students

(c) When resource room and/or itinerant teachers serve students with differing disabilities, the maximum caseload must be determined by the majority of the students in enrollment in an area of disability.

(d) The maximum continuous caseload for speech–language therapists must not exceed 60 students.

Fiscal Impact Statement: None

Statement of Rationale: The proposed amendments further align South Carolina's regulation on professional staff qualifications with the new federal No Child Left Behind Act of 2001. A copy of the Statement of Rationale is available in the Division of Teacher Quality, Landmark II Office Building, Suite 500, 3700 Forest Drive, Columbia, South Carolina 29204.

Document No. 2964
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. § 59-5-60 (2004), § 59-21-510 *et seq*. (2004), and § 59-33-10 *et seq.* (2004)

43-243.4. Utilization of Generic Teacher Certification

Synopsis:

The State Board of Education promulgated amendments to R 43-243.4, Utilization of Generic Teacher Certification, that will allow persons holding a generic teaching certificate issued by the State Department of Education to provide instruction to students with mild disabilities diagnosed as learning disabled, emotionally disabled, or educable mentally disabled through either a resource or an itinerant services delivery model. Persons holding a generic teaching certificate are also authorized to provide instruction in a self-contained setting for students diagnosed as learning disabled or educable mentally disabled.

The Notice of Drafting was published in the *State Register* on June 25, 2004.

Section-by-Section Discussion

Added last sentence	Persons holding a generic teaching certificate are also authorized to provide instruction in a self-contained setting for students diagnosed as learning disabled or educable mentally disabled.
Changing terminology	Handicapped wording has been changed to disabled.

Instructions: Amend in its entirety R 43-259, Graduation Requirements, to Chapter 43 regulations.

Text:

43-243.4. Utilization of General Teacher Certification

Persons holding a generic teaching certificate issued by the State Department of Education are authorized to provide instruction to students with mild disabilities diagnosed as learning disabled, emotionally disabled, or educable mentally disabled through either a resource or an itinerant services delivery model. Persons holding a generic teaching certificate are also authorized to provide instruction in a self-contained setting for students diagnosed as learning disabled or educable mentally disabled.

Statement of Rationale: A copy of the Statement of Rationale is available in the Office of Exceptional Children, 1429 Senate Street, Rutledge Building, Room 808, Columbia, South Carolina 29201.

Fiscal Impact Statement: None

Document No. 2943
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 48-1-10 et seq.

R.61-62, *Air Pollution Control Regulations and Standards*

Synopsis:

On December 31, 2002 (67 FR 80185), the United States Environmental Protection Agency (EPA) finalized revisions governing the New Source Review (NSR) program mandated by parts C and D of title I of the Clean Air Act (CAA). The major NSR program, contained in parts C and D of title I of the CAA, is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In areas not meeting health-based National Ambient Air Quality Standards (NAAQS), the program is implemented under the requirements of part D of title I of the CAA. This is referred to as the nonattainment NSR program. In areas meeting the NAAQS (attainment areas), the NSR requirements under part C of title I apply. This is referred to as the Prevention of Significant Deterioration (PSD) program. Collectively, these programs are commonly referred to as the major NSR program.

In accordance with EPA's final rule revisions, state agency programs must adopt and submit revisions to their State Implementation Plans (SIPs) to include the minimum program elements outlined in the final rules. States may choose to adopt provisions that differ from the final rules, however, to be approvable under the SIP, the state must show that the regulation is at least as stringent as EPA's amendments. In accordance with these rules, states are required to adopt and submit revisions to their SIPs no later than January 2, 2006.

This amendment revises R.61-62.1, *Definitions and General Requirements*, R.61-62.5, Standard 7, *Prevention of Significant Deterioration*, and adds new R.61-62.5, Standard 7.1, *Nonattainment New Source Review.*

Discussion of Revisions:

SECTION CITATION:	EXPLANATION OF CHANGE
R.61-62.1, DEFINITIONS AND GENERAL REQUIREMENTS	
Section II- Permit Requirements	Paragraph H(1)(a) has been amended to allow for synthetic minor permits in attainment and nonattainment areas.
SECTION CITATION:	**EXPLANATION OF CHANGE**
R.61-62.5, STANDARD 7, PREVENTION OF SIGNIFICANT DETERIORATION	
(a)(2)	Section (a) has been revised to (a)(1) and (2). New section (a)(2) has been added to specify new applicability tests for review of modified sources.
(a)(2)(iv)(f)	Correction to typographical error due to comment from EPA.
(b)	Fifteen new definitions have been added, and all definitions have been put in alphabetical order. Section (b) introduction revised to refer to the regulation instead of section.

(b)(1)(i), (b)(ii) and (b)(iv)	Revised to add language to the definition of actual emissions detailing that actual emissions refer to regulated NSR pollutants and that this paragraph does not apply to Plantwide Applicability Limitations. Clarified that actual emissions are based on a consecutive 24-month period. Removed reference to electric utility steam generating unit.
(b)(1)(v)	Deleted section for consistency with the federal regulations due to comment from EPA.
(b)(3)	Made modification to section.
(b)(4)	A new definition has been added for "Baseline actual emissions."
(b)(4)(i)(a)	The word "malfunction" was deleted from the federal rule in this paragraph. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department has never permitted malfunction emissions, and since malfunction emissions were to be calculated in both the baseline actual emissions and the projected future actual emissions, the Department concluded that there was no advantage to including malfunction emissions in either calculation.
(b)(4)(ii)	Language change for clarity due to comment from EPA.
(b)(4)(ii)	Language added to specify that the Department reserves the right to determine if the 24-month period used in the calculation of baseline actual emission is appropriate. This language makes the regulation more stringent than the federal rule.
(b)(5) – (b)(6)	Made modifications to section.
(b)(5)(ii)(b)	Language change for clarity due to comment from EPA.
(b)(6)(i)	Added the words "minor source."
(b)(8)	Made modification to section.
(b)(8)	The phrase "pollutant subject to regulation under Clean Air Act" changed to "regulated NSR pollutant" due to comment from EPA.
(b)(12)	A new definition has been added for "Clean Unit."
(b)(15)	Made modification to section.
(b)(16)	A new definition has been added for "Continuous emissions monitoring system."
(b)(17)	A new definition has been added for "Continuous emissions rate monitoring system."
(b)(18)	A new definition has been added for "Continuous parameter monitoring system."

(b)(20)	Added language to designate two types of emissions units: new and existing.
(b)(22)	Made modification to section.
(b)(22)	Language change for clarity due to comment from EPA.
(b)(26)	Typographical change due to comment from EPA.
(b)(29)	A new definition has been added for "Lowest achievable emission rate."
(b)(30)	Added language to specify that a major modification occurs when there is a significant emissions increase and a significant net emissions increase.
(b)(30)(ii)	Added language stating that a source that is a major modification for volatile organic compounds is significant for ozone.
(b)(30)(iii)(b)	Typographical change due to comment from EPA.
(b)(30)(iii)(c)	Deleted the word federal.
(b)(30)(iii)(h)	Added language specifying that pollution control projects are available at all emission units.
(b)(30)(iii)(h)(1)-(2)	Deleted sections for consistency with the federal regulations due to comment from EPA.
(b)(30)(iv)	Added language to specify that the definition of major modification under paragraph (b)(30) does not apply to stationary sources complying with a Plantwide Applicability Limitation.
(b)(32)	Made modifications to this section. Added language to clarify that sources that are major for oxides of nitrogen are major for ozone.
(b)(34)	Made modifications to this section. Added language to specify that calculations of the baseline actual emissions in determining the net emissions increase will not include projects that include multiple emissions units. Added language to state that increases or decreases in emissions are credible if the Department has not used those increases or decreases in permitting another project at the stationary source. Added language to state that increases or decreases in emissions at a Clean Unit are not credible. Added language to clarify that decreases in actual emissions are credible if they are federally enforceable. Added language to specify that reductions at Clean Units cannot be later used in netting analyses at other emission units. Added new subsection for determining creditable increases and decreases.
(b)(34)(iii)	Statement added specifying the time period before the date that the increase from the particular change occurs due to comment from EPA.

(b)(35)	Added language to include pollution control projects that are presumed to be environmentally beneficial. Also, language added to make these types of projects available to all emission units.
(b)(35)(vi)(b)(2)-(3)	Typographical change due to comment from EPA.
(b)(36)	A new definition has been added for "Pollution prevention."
(b)(38)	A new definition has been added for "Predictive emissions monitoring system."
(b)(39)	A new definition has been added for "Prevention of Significant Deterioration Program."
(b)(39)	Section has been reworded for clarity due to comment from EPA.
(b)(40)	A new definition has been added for "Project."
(b)(41)	A new definition has been added for "Projected actual emissions."
(b)(41)(ii)(b)	The word "malfunction" was deleted from the federal rule in this paragraph. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department has never permitted malfunction emissions, and since malfunction emissions were to be calculated in both the baseline actual emissions and the projected future actual emissions, the Department concluded that there was no advantage to including malfunction emissions in either calculation.
(b)(41)(ii)(d)	Typographical error corrected due to comment from EPA.
(b)(43)	A new definition has been added for "Reasonably available control technology."
(b)(44)	A new definition has been added for "Regulated NSR pollutant."
(b)(44)(iv)	Typographical error corrected due to comment from EPA.
(b)(45)	A new definition has been added for "Replacement unit."
(b)(46)(i)	The word "Department" has been replaced with the word "Administrator" due to comment from EPA.
(b)(47)	Definition of representative actual annual emissions is deleted and section is reserved.
(b)(48)	Language added to insure consistency with federal regulations due to comment from EPA.
(b)(49)	Deleted pollutant emission rates for asbestos, beryllium, mercury, and vinyl chloride. Added oxides of nitrogen to the significance level of ozone. Made modifications to this section.

(b)(50)	A new definition has been added for "Significant emissions increase."
(b)(51)	Made modifications to this section.
(b)(53)	The reference to the definition of volatile organic compound has been change to refer to Regulation 61-62.1, *Definitions and General Requirements*.
(g)(2) – (g)(5)	Made modifications to these sections.
(h)(2)	Made a modification to this section.
(i)	Has been replaced in its entirety to comply with federal regulations.
(j)(1) – (j)(3)	Made modifications to these sections.
(l)	Made modifications to this section.
(m)(1)(iv)	Made a modification to this section.
(m)(3)	Made modifications to this section.
(p)(1)	Made a modification to this section.
(p)(3) – (p)(8)	Made modifications to this section.
(q)(1) – (q)(2)	Made modifications to these sections.
(r)	A statement at the beginning of this paragraph has been added to clarify that an owner/operator of a stationary source shall comply with all parts of this regulation.
(r)(5)	New subsection has been added and reserved.
(r)(6)	Language added setting out monitoring, recordkeeping, and reporting requirements.
(r)(6)(i) and (r)(7)	Language added to clarify that sources must submit or retain information per Department's minor source permitting regulation. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department's minor source permitting program is an applicable condition that sources must meet in order to construct in this state.
(s)	Paragraph regarding Environmental Impact Statement is unnecessary and has been deleted due to comment from EPA. Section has been reserved.
(t)	Section is unnecessary and has been deleted due to comment from EPA. Section has been reserved.

(v)(2)(ii) – (v)(2)(iii)	Made modifications to this section.
(w)(1) – (w)(2)	Made modifications to this section.
(x)	A new paragraph has been added for Clean Units at emission units subject to Best Available Control Technology or Lowest Achievable Control Rate.
(x)(3)(iii)	Language was added to clarify that a facility shall request a modification to their Title V permit from the Department prior to using the Clean Unit Test. This change makes this paragraph more stringent than the federal rule. This language is justified because according to federal regulations, a facility must have those emission units that have been designated as Clean Units identified in their Title V operating permit. The language in this paragraph will make the Department aware of such designation and allow the Department to efficiently incorporate the designation into the Title V permit.
(x)(4)(i)	Language added to insure consistency with federal regulations due to comment from EPA.
(y)	A new paragraph has been added for Clean Units that achieve an emission limitation comparable to Best Available Control Technology (BACT).
(y)(4)(i)	The words "the average of" have been deleted to ensure that sources seeking Clean Unit status for units with emission controls comparable to BACT undergo a true "top-down" BACT analysis. This language makes the regulation more stringent than the federal rule.
(z)	A new paragraph has been added for pollution control project exclusion procedural requirements.
(z)(1)	Language added to clarify that a source shall comply with the Department's minor source permitting program before beginning actual construction of the pollution control project. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department's minor source permitting program is an applicable condition that sources must meet in order to construct in this state.
(z)(2)	Language added to clarify that projects that are presumed to be environmentally beneficial shall comply with the Department's minor source permitting program. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department's minor source permitting program is an applicable condition that sources must meet in order to construct in this state.
(z)(3)	Language added to clarify that projects that are not presumed to be environmentally beneficial shall comply with the Department's minor source permitting program and public participation requirements under paragraph (q) of this regulation. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department's minor source permitting program is an applicable condition that sources must meet in order to construct in

	this state. The Department also believes that projects that are not presumed to be environmentally beneficial should have the opportunity for public comment. The federal regulations do not provide for this opportunity.
(z)(6)(i)	Language added to insure consistency with federal regulations due comment from EPA.
(aa)	A new paragraph has been added for Actuals Plantwide Applicability Limitation (PAL).
(aa)(1)(ii)(b)	Language added clarifying that Plantwide Applicability Limitation applications will be reviewed under the Department's minor source permitting program. This change makes this paragraph more stringent than the federal rule. This change is justified because the Department's minor source permitting program is an applicable condition that sources must meet in order to construct in this state.
(aa)(6)(ii)	Language added specifying that when establishing the 10 year actual Plantwide Applicability Limitation level, the use of an emissions unit's potential to emit shall be restricted to only those unit's that were constructed less than 24-months prior to the date of the Plantwide Applicability Limitation application. This change makes this paragraph more stringent than the federal rule. This change is justified because facilities that have experienced continuous construction in the last ten years could receive large Plantwide Applicability Limitation limits based on the emissions unit's allowable emissions. The Department believes that if a unit has actual emissions data, then that data should be used since it is more representative of actual operating conditions.
(bb)	A severability clause has been added to this regulation.
61-62.5, Standard 7.1.	new regulation has been added

Instructions: Amend R.61-62 per each individual instruction provided below for 61-62.1, 61-61.5, Standard 7, and 61-62.5, Standard 7.1.

Amend R.61-62.1, Section II.H(1)(a); remaining subitems remain the same:

H. Synthetic Minor Plant Permits

1. General Provisions

(a) Any stationary source that is a major plant or major modification may request to use federally enforceable permit conditions to limit the source's potential to emit and become a synthetic minor plant.

Replace R.61-62.5, Standard 7, *Prevention of Significant Deterioration,* in entirety as shown below due to numerous revisions:

SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS

STANDARD NO. 7
PREVENTION OF SIGNIFICANT DETERIORATION

(a)(1) Reserved.

(2) **Applicability procedures.**

(i) The requirements of this regulation apply to the construction of any new major stationary source (as defined in paragraph (b)(32)) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under 40 CFR 81.341.

(ii) The requirements of paragraphs (j) through (r) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(a) through (f).

(a) Except as otherwise provided in paragraphs (a)(2)(v) and (vi), and consistent with the definition of major modification contained in paragraph (b)(30), a project is a major modification for a regulated New Source Review (NSR) pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (b)(50)), and a significant net emissions increase (as defined in paragraphs (b)(34) and (b)(49)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (b)(34). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41)) and the baseline actual emissions (as defined in paragraphs (b)(4)(i) and (ii)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(d) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b) (4)(iii)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(e) **Emission test for projects that involve Clean Units.** For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

(f) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) through (e) as applicable with respect to each emissions unit, equals or exceeds, the significant amount for that pollutant (as defined in paragraph (b)(49)). For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph (a)(2)(iv)(c) for the existing unit and using the method specified in paragraph (a)(2)(iv)(e) for the Clean Unit.

(v) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under paragraph (aa).

(vi) An owner or operator undertaking a Pollution Control Project (PCP) (as defined in paragraph (b)(35)) shall comply with the requirements under paragraph (z).

(b) Definitions.

For the purposes of this regulation:

(1)(i) **"Actual emissions"** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(ii) through (iv), except that this definitions shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa). Instead, paragraphs (b)(41) and (b)(4) shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **"Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(3)"**Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(4) **"Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(4)(i) through (iv).

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(4)(i)(b).

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this section or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(4)(ii)(b) and (c).

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(4)(i), for other existing emissions units in accordance with the procedures contained in paragraph (b)(4)(ii), and for a new emissions unit in accordance with the procedures contained in paragraph (b)(4)(iii).

(5)(i) **"Baseline area"** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) Area redesignations under section 107(d)(1)(D) or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with paragraph (b)(31)(iv).

(6)(i) **"Baseline concentration"** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions, as defined in paragraph (b)(1), representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) (6)(ii); and

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions, as defined in paragraph (b)(1), from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases, as defined in paragraph (b)(1), at any stationary source occurring after the minor source baseline date.

(7)"**Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(8) **"Best available control technology"** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 and 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(9) **"Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(10) **"Clean coal technology"** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) **"Clean coal technology demonstration project"** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(12) **"Clean Unit"** means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to paragraph (x); or any emissions unit that has been designated by the Department as a Clean Unit, based on the criteria in paragraphs (y)(3)(i) through (iv).

(13) **"Commence"** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(14) **"Complete"** means in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(15) **"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(16) **"Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(17) **"Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(18) **"Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of this regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(19) **"Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) **"Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(19). For purposes of this regulation, there are two types of emissions units as described in paragraphs (b)(20)(i) and (ii).

(i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(20)(i). A replacement unit, as defined in paragraph (b)(45), is an existing emissions unit.

(21) **"Federal Land Manager"** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(22) **"Federally enforceable"** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(23) **"Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(24) **"High terrain"** means any area having an elevation 900 feet or more above the base of the stack of a source.

(25) **"Indian Governing Body"** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(26) **"Indian Reservation"** means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(27) **"Innovative control technology"** means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(28) **"Low terrain"** means any area other than high terrain.

(29) **"Lowest achievable emission rate (LAER)"** is as defined in paragraph (c)(5) of Regulation 61-62.5 Standard 7.1, "*Nonattainment New Source Review.*"

(30)(i) **"Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(50)) of a regulated NSR pollutant (as defined in paragraph (b)(44)); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph (b)(50)) from any emissions units or net emissions increase (as defined in paragraph (b)(34)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

(g) Any change in ownership at a stationary source.

(h) The addition, replacement, or use of a PCP, as defined in paragraph (b)(35), at an existing emissions unit meeting the requirements of paragraph (z). A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) shall apply.

(31)(i) **"Major source baseline date"** means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(ii) **"Minor source baseline date"** means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and
(b) In the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the Department shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(32)(i) **"Major stationary source"** means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (b)(32)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(32), as a major stationary source, if the changes would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this regulation whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more that 250 million British thermal units per hour heat input, and

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(33) **"Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(34)(i) **"Net emissions increase"** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) The increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv); and

(b) Any other increases and decreases in actual emissions at the major stationary source that are

contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(34)(i)(b) shall be determined as provided in paragraph (b)(4), except that paragraphs (b)(4)(i)(c) and (b)(4)(ii)(d) shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(a) The Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(b) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) and;

(c) It occurs within five years before the date that the increase from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(d) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under paragraph (y) or under regulations approved pursuant to 40 CFR 51.165 or to 40 CFR 51.166 (u). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the designation is based on in calculating the net emissions increase for another emissions unit (*i.e.*, must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded pursuant to paragraph (z) or for a Clean Unit designation are creditable to the extent they meet the requirements in paragraph (z)(6)(iv) for the PCP and paragraphs (x)(8) or (y)(10) for a Clean Unit.

(vii) [Reserved]

(viii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(ix) Paragraph (b)(1)(ii) shall not apply for determining creditable increases and decreases.

(35) **"Pollution control project** (PCP)" means any activity, set of work practices or project (including pollution prevention as defined under paragraph (b)(36)) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions though the PCP. Projects listed in paragraphs (b)(35)(i) through (vi) are presumed to be environmentally beneficial pursuant to paragraph (z)(4)(i). Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion pursuant to the requirements of paragraphs (z)(3) and (z)(4).

(i) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

(ii) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(iii) Flue gas recirculation, low-NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.

(iv) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this regulation, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

(v) Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:

(a) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (*i.e.*, from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);

(b) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

(c) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;

(d) Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

(e) Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).

(vi) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP.) including changes to equipment needed to accommodate the activity or project, that meet the requirements of paragraphs (b)(35)(vi)(a) and (b).

(a) The productive capacity of the equipment is not increased as a result of the activity or project.

(b) The projected usage of the new substance is lower, on an ODP- weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedure in paragraphs (b)(35)(vi)(b)(1) through (4).

(1) Determine the ODP of the substances by consulting 40 CFR 82, subpart A, appendices A and B.

(2) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.

(3) Calculate the projected ODP-weighted amount by multiplying the project annual usage of the new substance by its ODP.

(4) If the value calculated in paragraph (b)(35)(vi)(b)(2) is more than the value calculated in paragraph (b)(35)(vi)(b)(3), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(36) **"Pollution prevention"** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(37) **"Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(38) **"Predictive emissions monitoring system (PEMS)"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(39) **"Prevention of Significant Deterioration (PSD) program"** means the EPA-implemented major source preconstruction permit programs or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(40) **"Project"** means a physical change in, or change in the method of operation of, an existing major stationary source.

(41)(i) **"Projected actual emissions"** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph (b)(41)(i) (before beginning actual construction), the owner or operator of the major stationary source:

(a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(b) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; and

(c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(4) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(d) In lieu of using the method set out in paragraph (a)(41)(ii)(a) through (c), may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37).

(42) **"Reactivation of a very clean coal-fired electric utility steam generating unit"** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(43) **"Reasonably available control technology (RACT)"** is as defined in 40 CFR 51.100(o).

(44) **"Regulated NSR pollutant,"** for purposes of this regulation, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (*e.g.*, volatile organic compounds are precursors for ozone);

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

(iv) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act.

(45) **"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (b)(45)(i) through (iv) are met. No credible emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i)The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(46)(i) **"Repowering"** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(47) **Reserved**

(48) **"Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, from a vessel; or from the following:

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(49)(i) **"Significant"** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter:
25 tpy of particulate matter emissions;
15 tpy of PM_{10} emissions

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2S): 10 tpy

Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year).

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

(ii) **"Significant"** means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(49)(i), does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(49)(i), significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$, (24-hour average).

(50) "**Significant emissions increase"** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(49)) for that pollutant.

(51) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(52) **"Temporary clean coal technology demonstration project"** means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State

implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(53) **"Volatile organic compounds (VOC)"** is as defined in Regulation 61-62.1, Section I, *Definitions*.

(c) Ambient air increments.

In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM_{10}, annual arithmetic mean	4
	PM_{10}, 24-hr maximum	8
Sulfur dioxide:	annual arithmetic mean	2
	24-hr maximum	5
	3-hr maximum	25
Nitrogen dioxide:	annual arithmetic mean	2.5

CLASS II		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM_{10}, annual arithmetic mean	17
	PM_{10}, 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Nitrogen dioxide:	annual arithmetic mean	25

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM_{10}, annual arithmetic mean	34
	PM_{10}, 24-hr maximum	60
Sulfur dioxide:	annual arithmetic mean	40
	24-hr maximum	182
	3-hr maximum	700
Nitrogen dioxide:	annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(d) Ambient air ceilings.

No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard, or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

(e) Restrictions on area classifications.

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(i) International parks,

(ii) National wilderness areas which exceed 5,000 acres in size,

(iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(f) [Reserved]

(g) Redesignation.

(1) All areas (except as otherwise provided under paragraph (e)) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e)) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.

(2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(i) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (e) refers may be redesignated as Class III if –

(i) The redesignation would meet the requirements of paragraph (g)(2);

(ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

(iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l), which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Department a proposal to redesignate areas Class I, Class II, or Class III: Provided, That:

(i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv); and

(ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if it is found, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(h) Stack heights.

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by--

(i) So much of the stack height of any source as exceeds good engineering practice, or

(ii) Any other dispersion technique.

(2) Paragraph (h)(1) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(i) Exemptions

(1) The requirements of paragraphs (j) through (r) shall not apply to a particular major stationary source or major modification, if:

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act; or

(viii) The source is a portable stationary source which has previously received a permit under this section, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

(ix) The source or modification was not subject to section 52.21 with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

(a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;

(b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.

(x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Department subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs (j) through (r) that were in effect before July 31, 1987 shall apply to such source or modification.

(2) The requirements of paragraphs (j) through (r) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Clean Air Act.

(3) The requirements of paragraphs (k), (m) and (o) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(4) The requirements of paragraphs (k), (m) and (o) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

(5) The Department may exempt a stationary source or modification from the requirements of paragraph (m), with respect to monitoring for a particular pollutant if:

(i) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide--575 $\mu g/m^3$, 8-hour average;
Nitrogen dioxide--14 $\mu g/m^3$, annual average;
Particulate matter--10 $\mu g/m^3$ of PM_{10}, 24-hour average;
Sulfur dioxide--13 $\mu g/m^3$, 24-hour average;
Ozone;[1]
Lead--0.1 $\mu g/m^3$, 3-month average;
Fluorides--0.25 $\mu g/m^3$, 24-hour average;
Total reduced sulfur--10 $\mu g/m^3$, 1-hour average;
Hydrogen sulfide--0.2 $\mu g/m^3$, 1-hour average;
Reduced sulfur compounds--10 $\mu g/m^3$, 1-hour average; or

[1] No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(8)(i), or the pollutant is not listed in paragraph (i)(8)(i).

(6) The requirements for best available control technology in paragraph (j) and the requirements for air quality analyses in paragraph (m)(1), shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Department subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(i) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date

was complete with respect to the requirements of this regulation other than those in paragraphs (m)(1)(ii) through (iv), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii) through (iv).

(8)(i) At the discretion of the Department, the requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(i)--(iv) may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i) through (iv).

(ii) The requirements for air quality monitoring of PM_{10} in paragraphs (m)(1), (ii) and (iv) and (m)(3) shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii), except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.

(9) The requirements of paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Department subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if

(i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM_{10} took effect in an implementation plan to which this section applies, and

(ii) the Department subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(j) Control technology review.

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR 60 and 61.

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

(k) Source impact analysis.

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(l) Air Quality Models

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR 51 appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR 51 appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q).

(m) Air quality analysis--

(1) Preapplication analysis.

(i) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(a) For the source, each pollutant that it would have the potential to omit in a significant amount;

(b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(iv) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(v) For any application which becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv), between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii), requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(a) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(b) If the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii), requires shall have been gathered over at least that shorter period.

(c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Department may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(vii) For any application that becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv) pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring of PM_{10} under paragraphs (i)(11)(i) and (ii) the owner or operator of the source or modification shall use a monitoring method approved by the Department and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Department.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58 of during the operation of monitoring stations for purposes of satisfying paragraph (m).

(n) Source information.

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (j), (l), (n) and (p) apply, such information shall include:

(i) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(ii) A detailed schedule for construction of the source or modification;

(iii) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the Department, the owner or operator shall also provide information on:

(i) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(ii) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(o) Additional impact analyses.

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The Department may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) Sources impacting Federal Class I areas--additional requirements--

(1) Notice to Federal land managers. The Department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Department shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q), and shall make available to them any materials used in making that determination, promptly after the Department makes such determination. Finally, the Department shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Department, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The Department shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Department finds that such an analysis does not demonstrate to the satisfaction of the Department that an adverse impact on visibility will result in the Federal Class I area, the Department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial--impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, then the permit shall not be issued.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies, the State may authorize the Administrator: Provided, That the applicable requirements of this regulation are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM_{10}, annual arithmetic mean	17
	PM_{10}, 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	325
Nitrogen dioxide:	annual arithmetic mean	25

(6) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph (q)(4) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Department shall issue a permit to such source or modification pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(7) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if it is found that the variance is in the national interest. If the variance is approved, the Department shall issue a permit pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(8) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to paragraph (q)(5) or (6) the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (Micrograms per cubic meter)		
Period of exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q) Public participation.

(1) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(i) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(ii) Make available in at least one location in each region in which the proposed plant or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed plant or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as written public comment.

(iv) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the plant or modification.

(v) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations.

(vi) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

(vii) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(viii) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the plant or modification.

(ix) Notify EPA of every action related to the consideration of the permit.

(3) The requirements of Section (q), Public Participation, of this standard shall not apply to any major plant or major modification which Section (i), Review of Major Stationary Sources and Major Modifications, would exempt from the requirements of Sections (k), (m), and (o), but only to the extent that, with respect to each of the criteria for construction approval under the South Carolina State Implementation Plan and for exemption under Section (i), requirements providing the public with at least as much participation in each material determination as those of Section (q) have been met in the granting of such construction approval.

(r) Source obligation. In addition to all other applicable requirements specified in this regulation, the owner or operator shall comply with the requirements of paragraphs (r)(1) through (r)(8).

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) Reserved

(6) **Monitoring, recordkeeping and reporting.** The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a Clean Unit or at a source with a

PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) If the project requires construction permitting under Regulation 61-62.1, Section II "Permit Requirements", the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(ii) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "Permit Requirements" is not required, the owner or operator shall maintain the information set out in paragraph (r)(6)(ii).

(ii) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(ii)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(ii), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(ii)(c)), by a significant amount (as defined in paragraph (b)(49)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(ii)(c). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii); and

(c) Any other information needed to make a compliance determination (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection).

(7) If a Clean Unit modification project or a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements", the owner or operator shall provide notification of source status as part of the permit application to the Department.

(8) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) available for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(s) through (u)(3) - Reserved.

(u)(4) In the case of a source or modification which proposes to construct in a class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a class II area, and where no standard under section 111 of the act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) Innovative control technology.

(1) An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Department shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:--

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2), by a date specified by the Department. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

(iv) The source or modification would not before the date specified by the Department:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(b) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(vi) The provisions of paragraph (p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The Department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3), the Department may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) **Permit rescission**.

(1) Any permit issued under this section or a prior version of this regulation shall remain in effect, unless and until it expires under paragraph (s) or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this regulation, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Department shall grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Department rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

(x) **Clean Unit Test for emissions units that are subject to BACT or LAER**. An owner or operator of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions in paragraphs (x)(1) through (9).

(1) **Applicability.** The provisions of this paragraph (x) apply to any emissions unit for which the Department has issued a major NSR permit within the last 10 years.

(2) **General provisions for Clean Units.** The provisions in paragraphs (x)(2)(i) through (iv) apply to a Clean Unit.

(i) Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with paragraph (x)(4)) and before the expiration date (as determined in accordance with paragraph (x)(5)) will be considered to have occurred while the emissions unit was a Clean Unit.

(ii) If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in paragraph (x)(6)(iv), the emissions unit remains a Clean Unit.

(iii) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in paragraph (x)(6)(iv), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to paragraph (x)(3)(iv)). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

(iv) A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of paragraphs (a)(2)(iv)(a) through (d) and paragraph (a)(2)(iv)(f) as if the emissions unit is not a Clean Unit.

(3) **Qualifying or re-qualifying to use the Clean Unit Applicability Test.** An emissions unit qualifies as a Clean Unit when the unit meets the criteria in paragraphs (x)(3)(i), (ii) and (iii). After the original Clean Unit expires in accordance with paragraph (x)(5) or is lost pursuant to paragraph (x)(2)(iii), such emissions unit may re-qualify as a Clean Unit under either paragraph (x)(3)(iv), or under the Clean Unit provisions in paragraph (y). To re-qualify as a Clean Unit under paragraph (x)(3)(iv), the emissions unit must obtain a new major NSR permit issued through the applicable PSD program and meet all the criteria in paragraph (x)(3)(iv). The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

(i) **Permitting requirement.** The emissions unit must have received a major NSR permit within the last 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(ii) **Qualifying air pollution control technologies.** Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under paragraph (b)(36) or work practices) that meets both the following requirements in paragraphs (x)(3)(ii)(a) and (b).

(a) The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(b) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(iii) Prior to using the Clean Units test, the facility shall notify the Department with a statement affirming that the conditions set out in paragraph (x)(3)(ii)(a) and (b) have been met in order to qualify as a Clean Unit.

(iv) **Re-qualifying for the Clean Unit designation.** The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT (or LAER), and the emissions unit must meet the requirements in paragraphs (x)(3)(i) and (x)(3)(ii).

(4) **Effective date of the Clean Unit designation.** The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined according to the applicable paragraph (x)(4)(i) or (x)(4)(ii).

(i) **Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing new control technology to meet current-day BACT.** The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date these provisions become effective and approved for incorporation into the SIP.

(ii) **Emissions units that re-qualify for the Clean Unit designation using an existing control technology.** The effective date is the date the new, major NSR permit is issued.

(5) **Clean Unit expiration.** An emissions unit's Clean Unit designation expires (that is, the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable paragraph (x)(5)(i) or (ii).

(i) **Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT.** For any emissions unit that automatically qualifies as a Clean Unit under paragraphs (x)(3)(i) and (ii) or re-qualifies by implementing new control technology to meet current-day BACT under paragraph (x)(3)(iv), the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in paragraph (x)(7).

(ii) **Emissions units that re-qualify for the Clean Unit designation using an existing control technology.** For any emissions unit that re-qualifies as a Clean Unit under paragraph (x)(3)(iv) using an existing control technology, the Clean Unit designation expires 10 years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in paragraph (x)(7).

(6) **Required title V permit content for a Clean Unit.** After the effective date of the Clean Unit designation, and in accordance with the provisions of Regulation 61-62.70, Title V Operating Permit Program, but no later than when the title V permit is renewed, the title V permit for the major stationary source must include the following terms and conditions in paragraphs (x)(6)(i) through (vi) related to the Clean Unit.

(i) A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

(ii) **The effective date of the Clean Unit designation.** If this date is not known when the Clean Unit designation is initially recorded in the title V permit (*e.g.*, because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (*e.g.*, the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the Department of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iii) **The expiration date of the Clean Unit designation.** If this date is not known when the Clean Unit designation is initially recorded into the title V permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.*, the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the Department of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iv) All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics which formed the basis for the BACT determination (*e.g.*, possibly the emissions unit's capacity or throughput).

(v) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation. (See paragraph (x)(7).)

(vi) Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in paragraph (x)(7).

(7) **Maintaining the Clean Unit designation.** To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs (x)(7)(i) through (iii). This paragraph (x)(7) applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

(i) The Clean Unit must comply with the emission limitation(s) and/ or work practice requirements adopted in conjunction with the BACT that is recorded in the major NSR permit, and subsequently reflected in the title V permit. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination (*e.g.*, possibly the emissions unit's capacity or throughput).

(ii) The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

(iii) The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

(8) **Netting at Clean Units.** Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(9) **Effect of redesignation on the Clean Unit designation.** The Clean Unit designation of an emissions unit is not affected by re-designation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(y) **Clean Unit provisions for emissions units that achieve an emission limitation comparable to BACT.** An owner or operator of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions in paragraphs (y)(1) through (11).

(1) **Applicability.** The provisions of this paragraph (y) apply to emissions units which do not qualify as Clean Units under paragraph (x), but which are achieving a level of emissions control comparable to BACT, as determined by the Department in accordance with this paragraph (y).

(2) **General provisions for Clean Units.** The provisions in paragraphs (y)(2)(i) through (iv) apply to a Clean Unit (designated under this paragraph (y)).

(i) Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with paragraph (y)(5)) and before the expiration date (as determined in accordance with paragraph (y)(6)) will be considered to have occurred while the emissions unit was a Clean Unit.

(ii) If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (y)(4)) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in paragraph (y)(8)(iv), the emissions unit remains a Clean Unit.

(iii) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (y)(4)) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in paragraph (y)(8)(iv), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to paragraph (y)(3)(iv)). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

(iv) A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of paragraphs (a)(2)(iv)(a) through (d) and paragraph (a)(2)(iv)(f) as if the emissions unit is not a Clean Unit.

(3) **Qualifying or re-qualifying to use the Clean Unit applicability test.** An emissions unit qualifies as a Clean Unit when the unit meets the criteria in paragraphs (y)(3)(i) through (iii). After the original Clean Unit designation expires in accordance with paragraph (y)(6) or is lost pursuant to paragraph (y)(2)(iii), such emissions unit may re-qualify as a Clean Unit under either paragraph (y)(3)(iv), or under the Clean Unit provisions in paragraph (x). To re-qualify as a Clean Unit under paragraph (y)(3)(iv), the emissions unit must obtain a new permit issued pursuant to the requirements in paragraphs (y)(7) and (8) and meet all the criteria in paragraph (y)(3)(iv). The Department will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

(i) **Qualifying air pollution control technologies.** Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under paragraph (b)(36) or work practices) that meets both the following requirements in paragraphs (y)(3)(i)(a) and (b).

(a) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of paragraph (y)(4). However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (*e.g.*, if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).

(b) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(ii) **Impact of emissions from the unit.** The Department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) **Date of installation.** An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the date these provisions become effective. However, for such emissions units, the owner or operator must apply for the Clean Unit designation before a period not exceeding twenty-four months following the date these provisions become effective. For technologies installed on and after the date these provisions become effective, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

(iv) **Re-qualifying as a Clean Unit.** The emissions unit must obtain a new permit (pursuant to requirements in paragraphs (y)(7) and (8)) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in paragraphs (y)(3)(i)(a) and (y)(3)(ii).

(4) **Demonstrating control effectiveness comparable to BACT.** The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of paragraph (y)(3)(i) according to either paragraph (y)(4)(i) or (ii). Paragraph (y)(4)(iii) specifies the time for making this comparison.

(i) **Comparison to previous BACT and LAER determinations.** The Administrator maintains an on-line data base of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding 5 years and entered into the RBLC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The Department shall also compare this presumption to any additional BACT or LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(ii) **The substantially-as-effective test.** The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under paragraph (y)(7). The Department shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(iii) **Time of comparison.**

(a) **Emissions units with control technologies that are installed before the date these provisions become effective.** The owner or operator of an emissions unit whose control technology is installed before the date these provisions become effective, may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in paragraph (y)(6).

(b) **Emissions units with control technologies that are installed on and after the date these provisions become effective.** The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(5) **Effective date of the Clean Unit designation.** The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by paragraph (y)(7) is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(6) **Clean Unit expiration.** If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to paragraph (y)(5). In addition,

for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in paragraph (y)(9).

(7) **Procedures for designating emissions units as Clean Units.** The Department shall designate an emissions unit a Clean Unit only by issuing a permit through Regulation 61-62.1 including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in paragraph (y)(8).

(8) **Required permit content.** The permit required by paragraph (y)(7) shall include the terms and conditions set forth in paragraphs (y)(8)(i) through (vi). Such terms and conditions shall be incorporated into the major stationary source's title V permit in accordance with the provisions of the applicable title V permit program under 40 CFR 70 or 40 CFR 71, but no later than when the title V permit is renewed.

(i) A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

(ii) **The effective date of the Clean Unit designation.** If this date is not known when the Department issues the permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (*e.g.*, the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the Department of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iii) The expiration date of the Clean Unit designation. If this date is not known when the Department issues the permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.*, the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the Department of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iv) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (*e.g.*, possibly the emissions unit's capacity or throughput).

(v) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (See paragraph (y)(9)).

(vi) Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in paragraph (y)(9).

(9) **Maintaining a Clean Unit designation.** To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs (y)(9)(i) through (v). This paragraph (y)(9) applies independently to each pollutant for which the Department has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

(i) The Clean Unit must comply with the emission limitation(s) and/ or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(ii) The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT (*e.g.*, possibly the emissions unit's capacity or throughput).

(iii) Reserved

(iv) The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

(v) The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

(10) **Netting at Clean Units.** Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis") unless such use occurs before the date these provisions become effective, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(11) **Effect of redesignation on a Clean Unit designation.** The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to paragraphs (x)(2)(iii) and (y)(2)(iii), it must re-qualify under the requirements that are currently applicable.

(z) **PCP exclusion procedural requirements.** PCPs shall be provided according to the provisions in paragraphs (z)(1) through (6).

(1) Before beginning actual construction of a PCP project, the owner or operator shall satisfy the requirements of Regulation 61-62.1, Section II.A, "*Construction Permit.* "

(2) Before beginning actual construction of a PCP project that is listed in paragraphs (b)(35)(i) through (vi) of this regulation, the owner or operator shall meet the requirements of Regulation 61-62.1 Section II.A, "*Construction Permit*" and paragraphs (z)(4) and (z)(5) of this regulation.

(3) **Permit process for unlisted projects.** Before beginning actual construction of a PCP project that is not listed in paragraphs (b)(35)(i) through (vi), the owner or operator shall meet the requirements of Regulation 61-62.1 Section II.A, "*Construction Permit"* and paragraphs (q) Public Participation and (z)(4) through (z)(5) of this regulation.

(4)Any project that relies on the PCP exclusion must meet the requirements of paragraphs (z)(4)(i) and (ii).

(i) **Environmentally beneficial analysis.** The environmental benefit from the emissions reductions of pollutants regulated under the Clean Air Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Clean Air Act. A statement that a technology from paragraphs (b)(35)(i) through (vi) is being used shall be presumed to satisfy this requirement.

(ii) **Air quality analysis.** The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(5) **Content of notice or permit application.** In the permit application sent to the Department, the owner or operator must include, at a minimum, the information listed in paragraphs (z)(5)(i) through (v).

(i) A description of the project.

(ii) The potential emissions increases and decreases of any pollutant regulated under the Clean Air Act and the projected emissions increases and decreases using the methodology in paragraph (a)(2)(iv) that will result from the project, and a copy of the environmentally beneficial analysis required by paragraph (z)(4)(i).

(iii) A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in Regulation 61-62.70, *Title V Operating Permit Program*.

(iv) A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs (z)(4)(i) and (ii), with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(v) Demonstration that the PCP will not have an adverse air quality impact (*e.g.*, modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by paragraph (z)(4)(ii). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(6) **Operational requirements.** Upon installation of the PCP, the owner or operator must comply with the requirements of paragraphs (z)(6)(i) through (iv).

(i) **General duty.** The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs (z)(4)(i) and (ii), with information submitted in the notice or permit application required by paragraph (z)(5), and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(ii) **Recordkeeping.** The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in paragraph (z)(6)(i).

(iii) **Permit requirements.** The owner or operator must comply with any provisions in the State Implementation Plan-approved permit or title V permit related to use and approval of the PCP exclusion.

(iv) **Generation of emission reduction credits.** Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (*e.g.*, taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(aa) **Actuals PALs.** The provisions in paragraphs (aa)(1) through (15) govern actuals PALs.

(1) **Applicability.**

(i) The Department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (aa)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (aa).

(ii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15), and complies with the PAL permit:

(a) Is not a major modification for the PAL pollutant;

(b) Does not have to be approved through Regulation 61-62.5, Standard 7, *Prevention of Significant Deterioration*. However, will be reviewed through R. 61-62.1, Section II A. *Permit Requirements*; and

(c) Is not subject to the provisions in paragraph (r)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(iii) Except as provided under paragraph (aa)(1)(ii)(c), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) **Definitions.** The definitions in paragraphs (aa)(2)(i) through (xi) shall apply to actual PALs consistent with paragraphs (aa)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(4)) of all emissions units (as defined in paragraph (b)(20)) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **"Allowable emissions"** means "allowable emissions" as defined in paragraph (b)(3), except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b).

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **"Small emissions unit"** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower.

(iv) **"Major emissions unit"** means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **"Plantwide applicability limitation (PAL)"** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15).

(vi) **"PAL effective date"** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **"PAL effective period"** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **"PAL major modification"** means, notwithstanding paragraphs (b)(30) and (b)(34) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **"PAL permit"** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1, Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **"PAL pollutant"** means the pollutant for which a PAL is established at a major stationary source.

(xi) **"Significant emissions unit"** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv).

(3) **Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunctions.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (aa)(13)(i).

(4) **General requirements for establishing PALs.**

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(a) through (g) are met.

(a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5).

(c) The PAL permit shall contain all the requirements of paragraph (aa)(7).

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) **Public participation requirements for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with section (q) "Public Participation" of this regulation. The Department must address all material comments before taking final action on the permit.

(6) **Setting the 10-year actuals PAL level.**

(i) Except as provided in paragraph (aa)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(4)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(49) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to the issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) Emissions from units (which do not include modification to existing units) on which operation began less than 24-months prior to the date of the PAL permit application must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) **Contents of the PAL permit.** The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (aa)(9).

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i).

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12).

(viii) A requirement to retain the records required under paragraph (aa)(13) on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (aa)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) **PAL effective period and reopening of the PAL permit.** The requirements in paragraphs (aa)(8)(i) and (ii) apply to actuals PALs.

(i) **PAL effective period.** The Department shall specify a PAL effective period of 10 years.

(ii) **Reopening of the PAL permit.**

(a) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11).

(b) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(c) Except for the permit reopening in paragraph (aa)(8)(ii)(a)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5).

(9) **Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(a) and (b).

(a) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(b) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(30).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established

pursuant to paragraph (r)(4), but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(c).

(10) **Renewal of a PAL.**

(i) The Department shall follow the procedures specified in paragraph (aa)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(a) through (d).

(a) The information required in paragraphs (aa)(3)(i) through (iii).

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (aa)(10)(iv)(a) and (b). However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(c).

(a) If the emissions level calculated in accordance with paragraph (aa)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(b); or

(b) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(c) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b):

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (aa)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) **Increasing a PAL during the PAL effective period.**

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (aa)(11)(i)(a) through (d).

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (aa)(11)(i)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5).

(12) **Monitoring requirements for PALs.** (i) General requirements. (a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (aa)(12)(ii)(a) through (d) and must be approved by the Department.

(c) Notwithstanding paragraph (aa)(12)(i)(b), the owner or operator may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(a) if approved by the Department.

(d) Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

(ii) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (aa)(12)(iii) through (ix):

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emission factors.

(iii) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) **Recordkeeping requirements.** (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii).

(i) **Semi-annual report.** The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g).

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i).

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) **Re-validation results.** The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) **Transition requirements.**

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL that was established prior to the date these provisions become effective with a PAL that complies with the requirements of paragraphs (aa)(1) through (15).

(bb) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Add R.61-62.5, Standard 7.1, *Nonattainment New Source Review*, to R.61-62, to read:

SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS

STANDARD NO. 7.1
NONATTAINMENT NEW SOURCE REVIEW (NSR)

(a) **Applicability**

(1) This rule applies to all major stationary sources constructed or modified in any nonattainment area as designated in 40 CFR 81.341 ("nonattainment area") if the emissions from such facility will cause or contribute to concentrations of a regulated NSR pollutant (as defined in paragraph (c)(13)) for which the nonattainment area was designated as nonattainment. Applicability to this regulation shall be based on the pollutant emission rate set out in paragraph (c)(14) for only those pollutants for which the area's designation is based.

(A) The requirements of paragraph (d) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as provided in paragraph (b).

(B) No new major stationary source or major modification to which the requirements of paragraph (d) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(2) **Redesignation to attainment**. If any nonattainment area to which this regulation applies is later designated in 40 CFR 81.341 as attainment, all sources in that nonattainment area subject to this regulation before the redesignation date shall continue to comply with this regulation.

(3) For any area designated as nonattainment a major stationary source or major modification that is major for volatile organic compounds or oxides of nitrogen is also major for ozone.

(b) **Applicability procedures.**

(1) Except as otherwise provided in paragraphs (b)(7) and (8), and consistent with the definition of major modification contained in paragraph (c)(6)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (c)(15), and a significant net emissions increase (as defined in paragraphs (c)(8) and (15). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (b)(1) through (6). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (c)(8). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (c)(11)) and the baseline actual emissions (as defined in paragraphs (c)(2)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s)**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37) of Regulation 61-62.5 Standard 7, "*Prevention of Significant Deterioration*" ("Standard 7")) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (c)(2)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(5) **Emission test for projects that involve Clean Units**. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

(6) **Hybrid test for projects that involve multiple types of emissions units**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (b)(3) through (5) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)). For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph (b)(3) for the existing unit and using the method specified in paragraph (b)(5) for the Clean Unit.

(7) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (i).

(8) An owner or operator undertaking a Pollution Control Project (PCP) (as defined in paragraph (c)(10)) shall comply with the requirements under paragraph (h).

(c) **Definitions.** The following definitions apply to this Standard only. Any other term contained within this Standard is as defined where indicated in Regulation 61-62.5, Standard 7, "*Prevention of Significant Deterioration.*"

(1)(A) **"Actual emissions"** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (c)(1)(B) through (D), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (i). Instead, paragraphs (c)(2) and (c)(11) shall apply for those purposes.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **"Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (c)(2)(A) through (D).

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (c)(2)(A)(ii).

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required either under this section or under a plan approved by the Administrator whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (d)(1)(c)(viii).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if

required by paragraphs (c)(2)(B)(ii) and (iii).

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (c)(2)(A), for other existing emissions units in accordance with the procedures contained in paragraph (c)(2)(B), and for a new emissions unit in accordance with the procedures contained in paragraph (c)(2)(C).

(3) **"Best available control technology (BACT)"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(4) **"Clean Unit"** means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT/LAER requirements, and qualifies as a Clean Unit in accordance with paragraph (f); or any emissions unit that has been designated by the Department as a Clean Unit, based on the criteria in paragraphs (g)(3)(i) through (iv).

(5) **"Lowest achievable emission rate (LAER)"** means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(6)(A) **"Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (c)(13)); and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(B) Any significant emissions increase (as defined in paragraph (c)(15)) from any emissions units or net emissions increase (as defined in paragraph (c)(8)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which;

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, or

(b) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976.

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of a PCP, as defined in paragraph (c)(10), at an existing emissions unit meeting the requirements of paragraph (h). A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The South Carolina State Implementation Plan, and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(D) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (i) for a PAL for that pollutant. Instead, the definition at paragraph (i)(2)(viii) shall apply.

(7)(A) **"Major stationary source"** means:

(i) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant, or

(ii) Any physical change that would occur at a stationary source not qualifying under paragraph (c)(7)(A)(i) as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(8)(A) **"Net emissions increase"** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (b); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (c)(8)(A)(ii) shall be determined as provided in paragraph (c)(2), except that paragraphs (c)(2)(A)(iii) and (c)(2)(B)(iv) shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(i) It occurs within five years before construction on the particular change commences; and

(ii) The Department has not relied on it in issuing a permit for the source, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) The increase or decrease in emissions did not occur at a Clean Unit, except as provided in paragraphs (f)(8) and (g)(10).

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(iii) The Department has not relied on it in issuing any permit or the Department has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit pursuant to paragraph (g). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to paragraph (h) or for a Clean Unit designation are creditable to the extent they meet the requirements in paragraphs (h)(6)(iv) for the PCP and paragraphs (f)(8) or (g)(10) for a Clean Unit.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph (c)(1)(B) shall not apply for determining creditable increases and decreases or after a change.

(9) **"Nonattainment major new source review (NSR) program"** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this regulation, or a program that implements 40 CFR 51, appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

(10) **"Pollution control project (PCP)"** means any activity, set of work practices or project (including pollution prevention as defined under paragraph (b)(36) of Standard 7) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in (c)(10)(A) through (F) are presumed to be environmentally beneficial pursuant to paragraph (h)(2)(i). Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion pursuant to the requirements of paragraphs (h)(2) and (h)(5).

(A) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

(B) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(C) Flue gas recirculation, low-NO_X burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for Internal Combustion engines), and oxidation/ absorption catalyst for control of NO_X.

(D) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this regulation, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

(E) Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:

(i) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);

(ii) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

(iii) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;

(iv) Switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

(v) Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).

(F) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the requirements of paragraphs (c)(10)(F)(i) and (ii).

(i) The productive capacity of the equipment is not increased as a result of the activity or project.

(ii) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedure in paragraphs (c)(10)(F)(ii)(a) through (d).

(a) Determine the ODP of the substances by consulting 40 CFR part 82, subpart A, appendices A and B.

(b) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.

(c) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.

(d) If the value calculated in paragraph (c)(10)(F)(ii)(b) is more than the value calculated in paragraph (c)(10)(F)(ii)(c), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(11)(A) **"Projected actual emissions"** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (c)(11)(A) before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (c)(2) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) In lieu of using the method set out in paragraphs (c)(11)(B)(i) through (iii) may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37) of Standard 7.

(12) **"Prevention of Significant Deterioration (PSD) permit"** means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(13) **"Regulated NSR pollutant,"** for purposes, means the following:

(A) Oxides of nitrogen or any volatile organic compounds;

(B) Any pollutant for which a national ambient air quality standard has been promulgated; or

(C) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (c)(13)(A) or (B), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

(14) **"Significant"** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, as rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Particulate matter:

15 tpy of PM_{10} emissions

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

(15) **"Significant emissions increase"** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (c)(14)) for that pollutant.

(16) **"Volatile organic compounds (VOC)"** is as defined in Regulation 61-62.1, Section I, *Definitions*.

(d) **Permitting requirements**

(1) **Conditions for approval**. If the Department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.341 as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

(A) The major stationary source or major modification is required to meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

(B) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same State as the proposed source are in compliance with all applicable emission limitations and standards under the Clean Air Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

(C) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources. Emission reductions shall be in effect and enforceable prior to the date the new source or modification commences operation. The emission reductions shall be obtained in accordance with the following provisions:

(i) Where the permitted emissions limit allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

(iii)(a) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA-approved attainment plan.

(b) Such reductions may be credited if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provision of paragraph (d)(C)(iii)(a) are observed.

(iv) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(v) All emission reductions claimed as offset credit shall be federally enforceable;

(vi) **Location of offsetting emissions.** Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Department’s approval only if (a) the other area has an equal or higher nonattainment classification then the area in which the proposed source is located and (b) emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(vii) **Emission offsetting ratios**. Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

(a) Emissions for carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), lead (Pb), particulate matter (PM_{10} and $PM_{2.5}$) nonattainment areas shall be offset at a ratio greater than one to one.

(b) Emissions for ozone nonattainment areas shall be offset for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in accordance with the following table:

Designation	Offset ratios
Subpart I	>1 to 1
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1
Extreme	1.5 to 1

(viii) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.

(ix) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.

(x) Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in paragraphs (f)(8) and (g)(10) of this regulation. Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in paragraph (h)(6)(iv) of this regulation.

(xi) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (b)(3) of Standard 7) and the actual emissions before the modification (as defined in paragraph (c)(1)) for each emissions unit.

(D) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR 51, Appendix S, *Emission Offset Interpretative Ruling*.

(E) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(2) (A) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(B) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(C) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law.

(D) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(3) The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (c)(11)(B)(i) through (iii) for calculating projected actual emissions.

(A) If the project requires construction permitting under Regulation 61-62.1, Section II "*Permit Requirements,*" the owner or operator shall provide a copy of the information set out in paragraph (d)(3)(B) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "*Permit Requirements*" is not required, the owner or operator shall maintain the information set out in paragraph (d)(3).

(B) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (c)(11)(B)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(C) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (d)(3)(B)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(D) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (d)(3)(B) setting out the unit's annual emissions during the year that preceded submission of the report.

(E) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (d)(3)(B), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (d)(3)(B)(iii)), by a significant amount (as defined in paragraph (c)(14)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (d)(3)(B)(iii). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph (d)(3)(C); and

(iii) Any other information needed for to make a compliance determination (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection).

(4) If a Clean Unit modification project or a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "*Permit Requirements,*" the owner or operator shall provide notification of source status as part of the permit application to the Department.

(5) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (d)(3) for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(6) Public Participation. Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(7) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(i) For the purposes of this paragraph (d)(7), the time frame for making a final determination shall be consistent with R. 61-30, *Environmental Protection Fees*, paragraph (H)(2)(c)(iii).

(ii) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(iii) Make available in at least one location in each region in which the proposed plant or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iv) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed plant or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as written public comment.

(v) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the plant or modification.

(vi) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations.

(vii) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

(viii) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(ix) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the plant or modification.

(x) Notify EPA of every action related to the consideration of the permit.

(e) **Exemptions**. The provisions of paragraph (d) shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(f) **Clean Unit Test for emissions units that are subject to LAER**. An owner or operator of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions in paragraphs (f)(1) through (9).

(1) **Applicability**. The provisions of paragraph (f) apply to any emissions unit for which the Department has issued a major NSR permit within the past 10 years.

(2) **General provisions for Clean Units**. The provisions in paragraphs (f)(2)(i) through (v) apply to a Clean Unit.

(i) Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with paragraph (f)(4)) and before the expiration date (as determined in accordance with paragraph (f)(5)) will be considered to have occurred while the emissions unit was a Clean Unit.

(ii) If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in paragraph (f)(6)(iv), the emissions unit remains a Clean Unit.

(iii) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in paragraph (f)(6)(iv), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to paragraph (f)(3)(iv)). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

(iv) A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of paragraphs (b)(1) through (4) and paragraph (b)(6) as if the emissions unit is not a Clean Unit.

(v) **Certain Emissions Units with PSD permits**. For emissions units that meet the requirements of paragraphs (f)(2)(v)(A) and (B), the BACT level of emissions reductions and/or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for Clean Units under paragraphs (f)(3) through (8). For these emissions units, all requirements for the LAER determination under paragraphs (f)(2)(ii) and (iii) shall also apply to the BACT permit terms and conditions. In addition, the requirements of paragraph (f)(7)(i)(B) do not apply to emissions units that qualify for Clean Unit status under this paragraph (f)(2)(v).

(A) The emissions unit must have received a PSD permit within the last 10 years and such permit must require the emissions unit to comply with BACT.

(B) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant(s) after issuance of the PSD permit and before the effective date of the Clean Unit Test provisions in the area.

(3) **Qualifying or re-qualifying to use the Clean Unit applicability test**. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in paragraphs (f)(3)(i) and (ii). After the original Clean Unit designation expires in accordance with paragraph (f)(5) or is lost pursuant to paragraph (f)(2)(iii), such emissions unit may re-qualify as a Clean Unit under either paragraph (f)(3)(iv), or under the Clean Unit provisions in paragraph (g). To re-qualify as a Clean Unit under paragraph (f)(3)(iv), the emissions unit must obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in paragraph (f)(3)(iv). Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

(i) **Permitting requirement**. The emissions unit must have received a major NSR permit within the past 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(ii) **Qualifying air pollution control technologies**. Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology (which includes pollution prevention as defined under paragraph (b)(36) of Standard 7 or work practices) that meets both the following requirements in paragraphs (f)(3)(ii)(A) and (B).

(A) The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(iii) Prior to using the Clean Units test, the facility shall notify the Department with a statement affirming that the conditions set out in paragraph (f)(3)(ii)(A) and (B) have been met in order to qualify as a Clean Unit.

(iv) **Re-qualifying for the Clean Unit designation**. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in paragraphs (f)(3)(i) and (f)(3)(ii).

(4) **Effective date of the Clean Unit designation**. The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined according to the applicable paragraph (f)(4)(i) or (f)(4)(ii).

(i) **Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing a new control technology to meet current-day LAER**. The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the Clean Unit applicability test are approved by the Administrator for incorporation into the plan and become effective for the State.

(ii) **Emissions units that re-qualify for the Clean Unit designation using an existing control technology**. The effective date is the date the new, major NSR permit is issued.

(5) **Clean Unit expiration**. An emissions unit's Clean Unit designation expires (that is, the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable paragraph (f)(5)(i) or (ii).

(i) **Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day LAER**. For any emissions unit that automatically qualifies as a Clean Unit under paragraphs (f)(3)(i) and (ii), the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in paragraph (f)(7).

(ii) **Emissions units that re-qualify for the Clean Unit designation using an existing control technology**. For any emissions unit that re-qualifies as a Clean Unit under paragraph (f)(3)(iv), the Clean Unit designation expires 10 years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit Designation in paragraph (f)(7).

(6) **Required title V permit content for a Clean Unit**. After the effective date of the Clean Unit designation, and in accordance with the provisions of Regulation 61-62.70, "*Title V Operating Permit Program*", but no later than when the title V permit is renewed, the title V permit for the major stationary source must include the following terms and conditions in paragraphs (f)(6)(i) through (vi) related to the Clean Unit.

(i) A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this Clean Unit designation applies.

(ii) **The effective date of the Clean Unit designation**. If this date is not known when the Clean Unit designation is initially recorded in the title V permit (*e.g.*, because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (*e.g.*, the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the Department of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iii) **The expiration date of the Clean Unit designation**. If this date is not known when the Clean Unit designation is initially recorded into the title V permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.*, the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the Department of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iv) All emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination (*e.g.*, possibly the emissions unit's capacity or throughput).

(v) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation. (See paragraph (f)(7)).

(vi) Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in paragraph (f)(7).

(7) **Maintaining the Clean Unit designation**. To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs (f)(7)(i) through (iii). This paragraph (f)(7) applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.

(i) The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the title V permit.

(A) The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination (*e.g.*, possibly the emissions unit's capacity or throughput).

(B) The Clean Unit may not emit above a level that has been offset.

(ii) The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

(iii) The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

(8) **Offsets and netting at Clean Units**. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then, the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(9) **Effect of redesignation on the Clean Unit designation**. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(g) **Clean Unit provisions for emissions units that achieve an emission limitation comparable to LAER**. An owner or operator of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions in paragraphs (g)(1) through (11).

(1) **Applicability**. The provisions of this paragraph (g) apply to emissions units which do not qualify as Clean Units under paragraph (f) of this regulation, but which are achieving a level of emissions control comparable to LAER, as determined by the Department in accordance with this paragraph (g).

(2) **General provisions for Clean Units**. The provisions in paragraphs (g)(2)(i) through (iv) apply to a Clean Unit (designated under this paragraph (g)).

(i) Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with paragraph (g)(5)) and before the expiration date (as determined in accordance with paragraph (g)(6)) will be considered to have occurred while the emissions unit was a Clean Unit.

(ii) If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (g)(4) of this regulation) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in paragraph (g)(8)(iv), the emissions unit remains a Clean Unit.

(iii) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to paragraph (g)(4)) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in paragraph (g)(8)(iv), then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to paragraph (g)(3)(iv)). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

(iv) A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of paragraphs (b)(1) through (4) and paragraph (b)(6) as if the emissions unit were never a Clean Unit.

(3) **Qualifying or re-qualifying to use the Clean Unit applicability test**. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in paragraphs (g)(3)(i) through (iii). After the original Clean Unit designation expires in accordance with paragraph (g)(6) or is lost pursuant to paragraph (g)(2)(iii), such emissions unit may re-qualify as a Clean Unit under either paragraph (g)(3)(iv), or under the Clean Unit provisions in paragraph (f). To re-qualify as a Clean Unit under paragraph (g)(3)(iv), the emissions unit must obtain a new permit issued pursuant to the requirements in paragraphs (g)(7) and (8) and meet all the criteria in paragraph (g)(3)(iv). The Department will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

(i) **Qualifying air pollution control technologies**. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under paragraph (b)(36) of Standard 7 or work practices) that meets both the following requirements in paragraphs (g)(3)(i)(A) and (B).

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of paragraph (g)(4). However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (*e.g.*, if the LAER determinations to which it is compared have resulted in a determination that no control measures are required).

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(ii) **Impact of emissions from the unit**. The Department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) **Date of installation**. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the date these provisions become effective. However, for such emissions units, the owner or operator must apply for the Clean Unit designation before a period not exceeding twenty-four months following the date these provisions become effective. For technologies installed after the plan requirements become effective, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

(iv) **Re-qualifying as a Clean Unit**. The emissions unit must obtain a new permit (pursuant to requirements in paragraphs (g)(7) and (8)) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in paragraphs (g)(3)(i)(A) and (g)(3)(ii).

(4) **Demonstrating control effectiveness comparable to LAER**. The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of paragraph (g)(3)(i) according to either paragraph (g)(4)(i) or (ii). Paragraph (g)(4)(iii) specifies the time for making this comparison.

(i) **Comparison to previous LAER determinations**. The administrator maintains an on-line data base of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding 5 years, and for which information has been entered into the RBLC. The Department shall also compare this presumption to any additional LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(ii) **The substantially-as-effective test**. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under paragraph (g)(7). The Department shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(iii) **Time of comparison**.

(A) **Emissions units with control technologies that are installed before the effective date of plan requirements implementing this paragraph**. The owner or operator of an emissions unit whose control technology is installed before the effective date of plan requirements implementing this paragraph (g) may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in paragraph (g)(6).

(B) **Emissions units with control technologies that are installed after the effective date of plan requirements implementing this paragraph**. The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(5) **Effective date of the Clean Unit designation**. The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by paragraph (g)(7) is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(6) **Clean Unit expiration**. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to paragraph (g)(5). In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in paragraph (g)(9).

(7) **Procedures for designating emissions units as Clean Units**. The Department shall designate an emissions unit a Clean Unit only by issuing a permit through a permitting program that has been approved by the Administrator and that conforms with the requirements of 40 CFR 51.160 through 51.164 including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in paragraph (g)(8).

(8) **Required permit content**. The permit required by paragraph (g)(7) shall include the terms and conditions set forth in paragraphs (g)(8)(i) through (vi). Such terms and conditions shall be incorporated into the major stationary source's title V permit in accordance with the provisions of the applicable title V permit program under 40 CFR part 70 or 40 CFR part 71, but no later than when the title V permit is renewed.

(i) A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

(ii) **The effective date of the Clean Unit designation**. If this date is not known when the Department issues the permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (*e.g.*, the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the Department of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iii) **The expiration date of the Clean Unit designation**. If this date is not known when the Department issues the permit (*e.g.*, because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (*e.g.*, the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the Department of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

(iv) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER (*e.g.*, possibly the emissions unit's capacity or throughput).

(v) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (See paragraph (g)(9).)

(vi) Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in paragraph (g)(9).

(9) **Maintaining Clean Unit designation**. To maintain Clean Unit designation, the owner or operator must conform to all the restrictions listed in paragraphs (g)(9)(i) through (v). This paragraph (g)(9) applies independently to each pollutant for which the Department has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

(i) The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(ii) The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER (*e.g.*, possibly the emissions unit's capacity or throughput).

(iii) The Clean Unit may not emit above a level that has been offset.

(iv) The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

(v) The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

(10) **Offsets and Netting at Clean Units**. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of plan requirements adopted to implement this paragraph (g) or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(11) **Effect of redesignation on the Clean Unit designation**. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to paragraphs (f)(2)(iii) and (g)(2)(iii), it must re-qualify under the requirements that are currently applicable.

(h) **PCP exclusion procedural requirements**. PCPs shall be provided according to the provisions in paragraphs (h)(1) through (6).

(1) Before beginning actual construction of a PCP project, the owner or operator shall satisfy the requirements of Regulation 61-62.1, Section II.A, "*Construction Permit.*"

(2) Any project that relies on the PCP exclusion must meet the requirements in paragraphs (h)(2)(i) and (ii).

(i) **Environmentally beneficial analysis**. The environmental benefit from the emission reductions of pollutants regulated under the Clean Air Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Clean Air Act. A statement that a technology from paragraphs (c)(10)(A) through (F) is being used shall be presumed to satisfy this requirement.

(ii) **Air quality analysis**. The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(3) **Content of notice or permit application**. In the notice or permit application sent to the Department, the owner or operator must include, at a minimum, the information listed in paragraphs (h)(3)(i) through (v).

(i) A description of the project.

(ii) The potential emissions increases and decreases of any pollutant regulated under the Clean Air Act and the projected emissions increases and decreases using the methodology in paragraph (b), that will result from the project, and a copy of the environmentally beneficial analysis required by paragraph (h)(2)(i).

(iii) A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in Regulation 61-62.70, *"Title V Operating Permit Program.*"

(iv) A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs (h)(2)(i) and (ii), with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(v) Demonstration that the PCP will not have an adverse air quality impact (*e.g.*, modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by paragraph (h)(2)(ii). An air quality impact analysis is not required for any pollutant which will not experience a significant emissions increase as a result of the project.

(4) **Review process for listed projects**. Before beginning actual construction of a PCP project that is listed in paragraphs (c)(10)(A) through (F), the owner or operator shall meet the requirements of Regulation 61-62.1 Section II. A, "*Construction Permit*" and paragraphs (h)(2) and (h)(3) of this regulation.

(5) **Permit process for unlisted projects**. Before beginning actual construction of a PCP project that is not listed in paragraphs (c)(10)(A) through (F) the owner or operator shall meet the requirements of paragraphs A. and G.5 of Regulation 61-62.1, Section II, "*Construction Permit,*" paragraph (d)(6) and (d)(7) of this regulation, and (h)(2) and (h)(3) of this regulation.

(6) **Operational requirements**. Upon installation of the PCP, the owner or operator must comply with the requirements of paragraphs (h)(6)(i) through (iii).

(i) **General duty**. The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by paragraphs (h)(2)(i) and (ii), with information submitted in the notice or permit application required by paragraph (h)(3), and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(ii) **Recordkeeping**. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in paragraph (h)(6)(i).

(iii) **Permit requirements**. The owner or operator must comply with any provisions in the plan-approved permit or title V permit related to use and approval of the PCP exclusion.

(iv) **Generation of emission reduction credits**. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (*e.g.*, taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) **Actuals PALs**. The provisions in paragraphs (i)(1) through (15) govern actuals PALs.

(1) **Applicability**.

(i) The Department may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph (i)(1)(ii)) if the PAL meets the requirements in paragraphs (i)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (i).

(ii) The Department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (i)(1) through (15), and complies with the PAL permit:

(A) Is not a major modification for the PAL pollutant;

(B) Does not have to be approved through Regulation 61-62.5, Standard 7.1, "*Nonattainment New Source Review*"; however, will be reviewed through Regulation 61-62.1, Section II A. "*Permit Requirements,*" and

(C) Is not subject to the provisions in paragraph (d)(2)(D) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(iv) Except as provided under paragraph (i)(1)(iii)(C), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) **Definitions.** The definitions in paragraphs (i)(2)(i) through (xi) shall apply to actuals PALs consistent with paragraphs (i)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (c) of this regulation; paragraph (b) of Regulation 61-62.5, Standard 7, "*Prevention of Significant* Deterioration"("Standard 7"); or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (c)(1)) of all emissions units (as defined in paragraph (b)(20) of Standard 7) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **Allowable emissions** means "allowable emissions" as defined in paragraph (b)(3) of Standard 7, except as this definition is modified according to paragraphs (i)(2)(ii)(A) through (B).

(A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37) of Standard 7, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (c)(14) or in the Clean Air Act, whichever is lower.

(iv) **Major emissions unit** means:

(A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (i)(1) through (i)(15).

(vi) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **PAL major modification** means, notwithstanding paragraphs (c)(6) and (8) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **PAL permit** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1 Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(xi) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (c)(13) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (i)(2)(iv).

(3) **Permit application requirements**. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (i)(13)(i).

(4) **General requirements for establishing PALs**.

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (i)(4)(i)(A) through (G) are met.

(A) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(B) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (i)(5).

(C) The PAL permit shall contain all the requirements of paragraph (i)(7).

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(E) Each PAL shall regulate emissions of only one pollutant.

(F) Each PAL shall have a PAL effective period of 10 years.

(G) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (i)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph (d)(1)(c) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) **Public participation requirement for PALs**. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent paragraph (d)(6) and (d)(7). The Department must address all material comments before taking final action on the permit.

(6) **Setting the 10-year actuals PAL level**. (i) Except as provided in paragraph (i)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (c)(2)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (c)(14) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which operation began less than 24-months prior to the date of the PAL permit application, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) **Contents of the PAL permit**. The PAL permit must contain, at a minimum, the information in paragraphs (i)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (i)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (i)(9).

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (i)(13)(i).

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (i)(12).

(viii) A requirement to retain the records required under paragraph (i)(13) on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (i)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) **PAL effective period and reopening of the PAL permit**. The requirements in paragraphs (i)(8)(i) and (ii) apply to actuals PALs.

(i) **PAL effective period**. The Department shall specify a PAL effective period of 10 years.

(ii) **Reopening of the PAL permit**.

(A) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (d)(2).

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (i)(11).

(B) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Department may impose on the major stationary source under the State Implementation Plan.

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(C) Except for the permit reopening in paragraph (i)(8)(ii)(A)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (i)(5).

(9) **Expiration of a PAL**. Any PAL which is not renewed in accordance with the procedures in paragraph (i)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (i)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (i)(9)(i)(A) through (B).

(A) Within the time frame specified for PAL renewals in paragraph (i)(10)(ii), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the

PAL effective period, as required under paragraph (i)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(B) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (i)(9)(i)(A), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph (c)(6).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (d)(2)(D), but were eliminated by the PAL in accordance with the provisions in paragraph (i)(1)(iii)(C).

(10) **Renewal of a PAL**.

(i) The Department shall follow the procedures specified in paragraph (i)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline**. A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements**. The application to renew a PAL permit shall contain the information required in paragraphs (i)(10)(iii)(A) through (D).

(A) The information required in paragraphs (i)(3)(i) through (iii).

(B) A proposed PAL level.

(C) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(D) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment**. In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (i)(10)(iv)(A) and (B). However, in no case may any such adjustment fail to comply with paragraph (i)(10)(iv)(C).

(A) If the emissions level calculated in accordance with paragraph (i)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (i)(10)(iv)(B); or

(B) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(C) Notwithstanding paragraphs (i)(10)(iv)(A) and (B),

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (i)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) **Increasing a PAL during the PAL effective period.**

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (i)(11)(i)(A) through (D).

(A) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(C) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (i)(11)(i)(A), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(D) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL

pollutant.

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (i)(11)(i)(B)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (i)(5).

(12) **Monitoring requirements for PALs**.

(i) General Requirements.

(A) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (i)(12)(ii)(A) through (D) and must be approved by the Department.

(C) Notwithstanding paragraph (i)(12)(i)(B), you may also employ an alternative monitoring approach that meets paragraph (i)(12)(i)(A) if approved by the Department.

(D) Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (i)(12)(iii) through (ix):

(A) Mass balance calculations for activities using coatings or solvents;

(B) Continuous emissions monitoring system (CEMS);

(C) Continuous parameter monitoring system (CPMS) or Predictive emissions monitoring system (PEMS); and

(D) Emission Factors.

(iii) Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(A) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(B) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(B) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(A) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (i)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) **Recordkeeping requirements**.

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (i) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(A) A copy of the PAL permit application and any applications for revisions to the PAL; and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements**. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (i)(14)(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (i)(14)(i)(A) through (G).

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (i)(13)(i).

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (i)(12)(vii).

(G) A signed statement by the responsible official (as defined by Regulation 61-62.70, *Title V Operating Permit Program*) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) Re-validation results. The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) **Transition requirements**.

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (i)(1) through (15).

(j) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of these amendments of R.61-62.

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:

Purpose: On December 31, 2002 (67 FR 80185), the United States Environmental Protection Agency (EPA) finalized revisions governing the New Source Review (NSR) program mandated by parts C and D of title I of the Clean Air Act (CAA). The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In areas not meeting health-based National Ambient Air Quality Standards (NAAQS), the program is implemented under the requirements of part D of title I of the CAA. This is referred to as the nonattainment NSR program. In areas meeting the NAAQS (attainment areas), the NSR requirements under part C of title I apply. This is referred to as the Prevention of Significant Deterioration (PSD) program. Collectively, these programs are commonly referred to as the major NSR program.

In accordance with EPA's final rule revisions, state agency programs must adopt and submit revisions to their State Implementation Plans (SIPs) to include the minimum program elements outlined in the final rules. States may choose to adopt provisions that differ from the final rules, however, to be approvable under the SIP, the state must show that the regulation is at least as stringent as EPA's amendments. In accordance with these rules, states are required to adopt and submit revisions to their SIPs no later than January 2, 2006.

Legal Authority: The legal authority for Regulation 61-62 is Section 48-1-10 et seq., S.C. Code of Laws.

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

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

The regulations are needed and is reasonable because they fulfill the Department's obligation to submit revisions to the State Implementation Plan (SIP) incorporating the finalized rules published by EPA on December 31, 2002. While the bulk of EPA's finalized rules were incorporated, the Department has exercised its discretion by developing revisions to tailor the final rules to South Carolina's distinctive conditions.

DETERMINATION OF COSTS AND BENEFITS:

The bulk of these revisions were made to comply with a federal mandate. EPA estimates that overall these revisions will provide more operational flexibility and reduce the overall burden on the state permitting program and the regulated community by reducing the number of permit modifications that will be required. The Department has included some revisions that go beyond the scope of the federal rule, however, most of these revisions are minor. For instance, provisions have been added to the regulation to clarify that, even though major NSR permits may not be required, the minor source permitting requirements of R.61-62.1, will still apply. Finally, amendments have been added to the federal rule concerning the calculations for baseline actual emissions, projected actual emissions, Clean Units designations, and plant-wide applicability limits. The Department believes that these changes are reasonable and will result in more accurate calculations. Furthermore, the Department does not believe that these changes will result in any increased costs to the State or its political subdivisions or to the regulated community.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

In promulgating these revisions, EPA has stated that they are necessary because the current permitting process is overly burdensome and results in disincentives to installing pollution control equipment needed to protect the environment.

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

As stated above, EPA believes that the current permitting process results in disincentives to modernize pollution control equipment. They believe that the environment and public health will benefit from a less burdensome permitting process and these benefits will not be realized if these revisions are not implemented.

STATEMENT OF RATIONALE:

The bulk of these revisions are being promulgated in order to comply with a federal mandate requiring States to revise their major source permitting programs. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The Department has included some additional language that goes beyond the scope of the federal rule. The additional language the Department is proposing is fairly minor

and the Department does not believe that these changes will result in any increased costs to the regulated community.

Document No. 2944
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-93-10 *et seq.;*
44-93-100 (Act 351, July 20, 2002)

R.61-105. Infectious Waste Management Regulations

Synopsis:

The South Carolina General Assembly amended the Infectious Waste Management Act by Act 351, effective July 20, 2002. This amendment of Section 44-93-100 requires that used sharps, such as, needles and syringes, from generators producing less than 50 pounds of infectious waste per month be treated prior to landfill disposition. This amendment revises R.61-105 to conform to these changes.

Also, the Department is clarifying Section G (Small Quantity Generators) of R. 61-105 by more clearly stating that if small quantity generators produce 50 pounds of infectious waste or more in any one calendar month, they must manage the waste according to R. 61-105. Generator status may be re-evaluated after the generator produces documentation showing 12 consecutive calendar months of waste production less than 50 pounds every month.

Additionally, stylistic changes are proposed to include corrections for clarification, references, and spelling to improve the overall text of the regulation.

Discussion of Proposed Revisions:

SECTION	CHANGE
61-105.F(6)(h)	Revised by moving a portion of the language to F(6)(i) and adding "transport offsite for treatment at a permitted treatment facility" for clarification.
61-105.F(6)(i)	Revised by moving existing language to F(6)(j) and by moving "offer infectious waste for offsite transport only to a transporter who maintains a current registration with the Department; and" from F(6)(h) to F(6)(i).
61-105.F(6)(j)	Moved existing language from F(6)(i) to F(6)(j).
61-105.G(1)(a)	Deleted reference to 6(h) and added 6(i) to end of sentence.
61-105.G(1)(b)(i)-(iii)	Revised these subitems to comply with Act 351 regarding use of sharps. This revision changes subsection items G(1)(b)(i)-(iii) to G(1)(b)(i)-(ii). "Sharps, microbiological cultures, products of conception, and human blood and blood products must be managed pursuant to this regulation."

61-105.G(3) Corrected the reference "EE" by replacing with "DD" .

New
61-105.G(4) Added to clarify requirement that "If in any calendar month 50 pounds or more of infectious waste is produced, the generator must notify the Department in writing; manage the infectious waste pursuant to the entire regulation; and pay the annual fee as outlined in Section DD of this regulation. A generator will be able to claim designation as a small quantity generator after submitting documentation demonstrating 12 calendar months of waste production less than 50 pounds."

Existing
61-105.U(14)(g) Revised to assure that treatment residues are disposed of in accordance with applicable State and Federal requirements.

Existing
61-105.W(5) Revised by deleting "and pay a fee as specified in the fees section".

Instructions: Amend R.61-105 pursuant to each individual instruction provided with the text below:

Text:

Sections 61-105.F and F(1) through F(6)(g) and F(7) remain the same; section 61-105.F(6)(h) and (i) subitems are revised to 61-105.F(6)(h), F(6)(i), and F(6)(j), to read as follows:

(h) treat infectious waste onsite or transport offsite for treatment at a permitted treatment facility.
(i) offer infectious waste for offsite transport only to a transporter who maintains a current registration with the Department, and
(j) weigh waste prior to sending offsite for disposal and maintain monthly generation rates in the facility operating record.

Section 61-105.G(1)(a) subitem is revised to read:

(a) the provisions of Section E and F, except Section F(4), (5) and (6)(i).

Section 61-105.G(1)(b)(i)-(iii) subitems are revised to 61-105.G(1)(b)(i)-(ii) to read:

(b) the management of the following infectious waste:
(i) sharps, microbiological cultures, products of conception, and human blood and blood products must be managed pursuant to this regulation; and
(ii) all other infectious waste may be disposed of as other solid waste after being properly packaged to prevent exposure to solid waste workers and the public.

Section 61-105.G(3) is revised to read:

If a small quantity generator offers infectious waste for transport offsite for treatment at a destination facility, the waste must be managed pursuant to Sections H through DD of this regulation.

New Section 61-105.G(4) is added to read:

(4) If in any calendar month 50 pounds of infectious waste or more is produced, the generator must notify the Department in writing; manage infectious waste pursuant to the entire regulation; and pay the annual fee as outlined in Section DD of this regulation. A generator will be able to claim designation as a small quantity generator after submitting documentation demonstrating 12 calendar months of waste production less than 50 pounds.

Section 61-105.U(14)(g) is revised to read:

(g) assure that treatment residues are disposed of in accordance with applicable State and Federal requirements.

Section 61-105.W(5) is revised to read:

(5) To obtain an Infectious Waste Management Permit, the person must complete a permit application as designed by the Department. Permit applications will not be processed until they are deemed complete by the Department.

Fiscal Impact Statement:

There will be minimal cost to the state and its political subdivisions.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-105, Infectious Waste Management

Purpose of Regulation: The purpose of this revision is to amend R.61-105 to comply with the provisions of Act 351, effective July 20, 2002, that amended the Infectious Waste Management Act. This amendment of Section 44-93-100 requires that used sharps, such as needles and syringes, from generators producing less than 50 pounds of infectious waste per month be treated prior to landfill disposition. Additionally, this amendment will clarify Section G (Small Quantity Generators) of R. 61-105 by more clearly stating that if small quantity generators produce 50 pounds of infectious waste or more in any one calendar month, they must manage the waste according to R. 61-105. Generator status may be re-evaluated after the generator produces documentation showing 12 consecutive calendar months of waste production less than 50 pounds every month. This amendment will also include corrections for clarification, references, and spelling to improve the overall text of the regulation.

Legal Authority: The Infectious Waste Management Regulations are authorized by the Infectious Waste Management Act of S.C. Code Section 44-93-10 *et seq.,* 1976, as amended; Section 44-93-100 (Act 351, July 20, 2002)

Plan for Implementation: The amendments will make changes to and be incorporated into R.61-105 upon approval of the General Assembly and publication in the *State Register*. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Since Regulation 61-105 was last amended, the South Carolina General Assembly amended the Infectious Waste Management Act. To bring the regulation up-to-date to comply with the statutory amendment, the Department has amended Section G, under Small Quantity Generators, to require small quantity generators to treat sharps before disposal prior to landfill disposition. Also, it is necessary that the Department amend Section G by more clearly stating that if small quantity generators produce 50 pounds of infectious waste or more in any one calendar month, they must manage the waste according to R.61-105. Generator status may be re-evaluated after the generator produces documentation showing 12 consecutive calendar months of waste production less than 50 pounds every month. Additionally, stylistic changes to include corrections for clarification, references, and spelling were made to improve the overall text of the regulation.

DETERMINATION OF COST AND BENEFITS: There will be minimal cost to the state and its political subdivisions to implement these changes. There will be costs to the regulated community. Some small quantity generators will incur costs to properly dispose of sharps. Proper treatment of sharps before disposal is inexpensive.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no adverse effect on the environment. The amendments will promote public health by improving the management of infectious waste within the health care community.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's Infectious Waste Management Regulations are believed to be beneficial to public health and the environment. There would be an adverse effect on the Department's ability to carry out its statutory mandate to ensure the proper management of infectious waste in a manner that is protective of public health and the environment.

Statement of Rationale: Effective July 20, 2002, Act 351 amended S. C. Code Section 44-93-100. This Act requires small quantity generators, those producing less than 50 pounds of infectious waste per month, to properly treat sharps prior to landfill disposition. The Department supported this legislation because proper disposal of contaminated sharps preserves public health by protecting solid waste workers and the public from injury and disease transmission. These regulatory changes are necessary to comply with the change in the law. Also, the Department is clarifying the Small Quantity Generator section. The revisions are not significant changes and can be described as administrative refinement of existing policy. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The revisions address questions from the regulated community regarding generator status.

Resubmitted May 10, 2005

Document No. 2928
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30
Statutory Authority: S.C. Code Section 48-39-10 *et seq*.

R.30-1 Statement of Policy, and
R.30-12 Specific Project Standards for Tidelands and Coastal Waters

Synopsis:

These regulatory changes clarify language related to the permitting of docks. The clarifications specify which standards apply to which types of docks. Additionally, new language will provide the Department with more incentives for the construction of community docks in lieu of multiple private docks. The changes address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language will make the Department's regulations more user-friendly and specific. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of changes requested by the House Agriculture, Natural Resources and Environmental Affairs Committee during 2005 Legislative Review

SECTION	CHANGE
30-1.D(16)(c)	Change the length defining a community dock from 200 feet to 250 feet.
30-12.A	Change language stating a Department preference to a statement about minimizing environmental impacts by construction community docks in exchange for multiple individual docks. Additionally, change the length defining a marina from 200 to 250 feet.
30-12.A(2)	Clarify that the standards in this section as well as those in 30-12.A(1) apply to construction of private and joint use docks.
30-12.A(2)(c)	Amend language to allow the construction of either a boat storage dock or a lift structure, with an impact area not to exceed 160 square feet, that will not count against total allowable dock square footage.
30-12.A(2)(c)(ix)	Remove language stating Department preference and make this subsection consistent with the change in 30-12A.(2)(c) described immediately above.
30-12.A(3)	Clarify that the standards in this section as well as those in 30-12.A(1) apply to construction of docks covered by Dock Master Plans.
30-12.A(4)	Clarify that the standards in this section as well as those in 30-12.A(1) apply to commercial docks.

30-12.A(4)(a)	Correct a scrivener's error and make this section consistent with 30-12.A(2)(c)(ii) by changing 10 to 20 feet.
30-12.A(5)	Clarify that the standards in this section as well as those in 30-12.A(1) apply to construction of community docks.
30-12.A(5)(c)	Replace language indicating Department preference with language stating that community docks have less environmental impact than multiple individual docks.

DHEC's Discussion of Revisions submitted for 2005 Legislative Review:

These revisions will 1) clarify the definitions for docks, 2) encourage the construction of community docks in lieu of private docks, 3) clarify which standards apply to commercial and community docks, and 4) make other changes as necessary to provide clarity, consistency and correctness in the use of terms, grammar and punctuation.

SECTION	CHANGE
30-1.D(16)	Add a definition, in proper alphanumeric order, for docks that includes the existing definitions for commercial, community, and private docks and remove the separate individual definitions for these types of docks. Add definitions for boat storage docks and joint use docks within the new dock definition. Renumber following definitions appropriately.
30-12.A	Move the existing language defining docks from 30-12A(1) into this introductory section. Add language explaining that this section is now divided into five parts providing standards for 1) all, 2) private and joint use, 3) master planned, 4) commercial and 5) community docks. Provide references to the definitions for docks and marinas. Add language stating the Department's policy of encouraging one or more community docks in lieu of multiple private docks.
30-12.A(1)	Delete the existing language defining docks.
30-12.A(2)(a)-(p)	Renumber as section 30-12.A(1)(a) – (p) and designate that the standards in this section apply to all docks.
30-12.A(2)(a)	Renumbered to 30-12.A(1)(a). Delete the word normally and change impede navigation to restrict reasonable navigation. Renumbered 30-12.A(1)(b) – (e) remain the same.
30-12.A(2)(f)	Renumbered to 30-12.A(1)(f). Delete language referring to walkway width from this section and move to 30-12.A(2)(b). Renumbered 30-12.A(1)(g) remains the same.
30-12.A(2)(h)	Renumbered 30-12.A(1)(h). Make editorial changes to provide consistency in the use of the term dock master plan (DMP). Clarify that changes to subdivision plats must be submitted to the Department. Amend the alphanumeric references to conform to these amendments. Move the language exempting lots in subdivisions with DMPs and other lots of record to revised and renumbered 30-12.A(2)(c). Renumbered 30-12.A(1)(i) and (j) remain the same.

30-12.A(2)(k)	Renumbered 30-12.A(1)(k). Move the portion of the language in this subsection limiting storage locker size to the section pertaining to private and joint use docks. Renumbered 30-12.A(1)(l) and (m) remain the same.
30-12.A(2)(n)	Renumbered to 30-12.A(1)(n). Delete the word normally in the first sentence and add a new sentence explaining possible exceptions to the requirement to extend to the first navigable creek. Delete the first normally in the sentence requiring pierheads to be built over open water and change normal low tide to mean low tide. Make other grammatical corrections to clarify language.
30-12.A(2)(o), 30-12. A(2)(o)(i) and (ii)	Renumbered to 30-12.A(1)(o), and 30-12.A(1)(o)(i) – (iii).Insert language clarifying that the water frontage requirements for community and commercial docks are 75 feet. Make the terms used to describe different dock types consistent with the new definition for docks. Renumbered 30-12.A(1)(o)(iii) remains the same.
30-12.A(2)(p)	Renumbered to 30-12.A(1)(p). Make language more definitive by changing should normally to will be. Make terms consistent by changing common to joint use docks.
30-12.A(1)(q)	New subsection added to include existing language moved from another section allowing docks to be rebuilt to their previous configuration.
30-12.A(1)(r)	Add a new subsection clarifying the requirement for a new permit with a change in use.
30-12.A(2)	Add new language designating this section as applicable to private and joint use docks.
30-12.A(2)(k)	Renumbered to 30-12.A(2)(a). New section added to insert the partial language limiting the size of storage lockers into this section applicable to private and joint use docks.
30-12.A(2)(f)	Renumbered to 30-12.A(2)(b). Insert existing language limiting walkway width to 4 feet.
30-12.A(2)(q)-(s)	Renumber in proper alphanumeric sequence to 30-12.A(2)(c) – (e).
30-12.A(2)(q)	Renumbered 30-12.A(2)(c) introductory paragraph. Add new language that will discourage structures that lift vessels in the air and create visual impacts by specifying that the area of boat storage docks larger than 8 feet by 20 feet as well as areas bounded by unroofed boat lifts and davits are included in the total allowable dock square footage determination. Add language to explain how the square footage impacts of boat lifts and davits will be calculated. Add language explaining how creek width will be measured in the absence of marsh vegetation. Insert the language exempting lots with approved DMPs and other lots of record that existed prior to May 24, 2002 from new sections 30-12.A(2)(c)(i) and (ii).
30-12.A(2)(q)(i)-(viii)	Renumbered 30-12.A(2)(c)(i) – (ix). Create a separate subsection (i) that contains the language prohibiting docks in creeks less than 10 feet wide. Renumber all subsequent subsections in proper alphanumeric sequence. Make grammatical changes to language regarding measuring creek width from marsh vegetation on each side. Amend references to other code sections to reflect proper alphanumeric numbering. In renumbered 30-12.A(2)(c)(ii) clarify that total allowable dock square footage is restricted to 50 square feet and that boat lifts, davits and boat storage docks will not be

permitted. In renumbered 30-12.A(2)(c)(viii) make language regarding restricting navigation consistent with other references in the regulations. In renumbered 30-12.A(2)(c)(ix) amend language to encourage boat storage docks as opposed to devices that lift vessels in the air for storage. Also insert language allowing the area of boat storage docks less than 8 feet by 20 feet in size to not be counted in the total allowable dock square footage provided and delete the definition of a boat storage dock.

30-12.A(2)(r) Renumbered to 30-12.A(2)(d). Make grammatical correction from which to that. Subitems 30-12.A(2)(d)(i) – (iii) remain the same.

30-12.A(2)(s) Renumbered to 30-12.A(2)(e) and 30-12.A(2)(e)(i) – (iii). Renumbered 30-12.A(2)(e)(i) and (ii) remain the same. Add language to renumbered 30-12.A(2)(e)(iii) stipulating that catwalks will be allowed to provide access to one side of a vessel.

30-12.A(2)(t) Delete from this section language allowing docks to be rebuilt and include in the previous section of standards applicable to all docks at renumbered 30-12.A(1)(q).

30-12.A(3), A(3)(a)-(c) Revised to 30-12.A(3) and 30-12.A(3)(a) – (e). Add language specifying that this section applies to docks covered by dock master plans, and make the language referring to dock master plans consistent throughout. Remove references to a general permit and add language clarifying that significant modifications to individual structures will not be permitted. Add a new subsection 30-12.A(3)(e) stating existing Department policy that allows for permit extensions to be granted upon a showing of significant activity.

30-12.A(4) Add a new section containing standards applicable to commercial docks.

30-12.A(5) Add a new section containing standards applicable to community docks.

Instructions: Amend R.30-1 and 30-12 pursuant to each individual instruction provided below with the text of the amendment.

Text of Amendments:

Amend R.30-1. D by deleting the definitions (12), (13) and (42) and inserting a definition for dock in proper alphanumeric order:

(16) Dock - All docks defined herein refer to structures that provide docking space for ten boats or less.
(a) Boat Storage Dock - a floating structure that a vessel is parked on for purposes of out-of-water storage.
(b) Commercial Dock – a docking facility used for commercial purposes. A commercial dock is not necessarily a marina, a boat yard, or a dry storage facility.
(c) Community Dock – any docking facility that provides access for more than four families, has effective docking space of no more than 250 linear feet and is not a marina. Effective docking space means adequate length and water depth to dock a 20-foot boat.
(d) Joint use dock – any private dock intended for the use of two to four families.
(e) Private Dock – any facility that provides access for one family, and is not a marina.

Amend R.30-12.A as follows:

A. Docks and Piers: A dock or pier is a structure built over and/or floating on water and is used to provide access to water and for the mooring of boats. Docks and piers are the most popular method of gaining access to deep water. Docks and piers sometimes pose navigational problems, restrict public use of the water and, under certain circumstances, possess potential for creating environmental problems. This section is divided in five parts providing standards for 1) all, 2) private and joint use, 3) master planned, 4) commercial and (5) community docks. Docks are defined in 30-1.D(16) Docks. Community docks have less environmental impact than multiple private or joint use docks. One or more community dock(s) in a development will be permitted when sufficient numbers of private or joint use docks are eliminated and other applicable Department regulations are met. This section does not include standards for marinas, which are addressed in 30-12.E. Marinas by definition include docks with more than 250 linear feet of effective docking space.

(1) The following standards are applicable for construction of all docks and piers:

(a) Docks and piers shall be limited to one structure per parcel and shall not restrict the reasonable navigation or public use of State lands and waters;

(b) Docks and piers shall be constructed in a manner that does not restrict water flow;

(c) The size and extension of a dock or pier must be limited to that which is reasonable for the intended use;

(d) Docks and piers should use the least environmentally damaging alignment;

(e) All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.

(f) Walkways leading to the dock or pier should be elevated at least three feet above mean high water.

(g) Dry storage in uplands will be encouraged in preference to moorage in crowded areas;

(h) Developers of subdivisions and multiple family dwellings are encouraged to develop plans which include joint-use docks and/or community docks at the time of required dock master plans. Dock corridors on the approved Dock Master Plan (DMP) must be shown with bearings or State Plane Coordinates on a recordable subdivision plat for the development, and recorded in the appropriate County Office of Deeds. Subsequent re-surveys or modifications to lots shall reference the dock corridors on the recorded subdivision plat and be submitted to the Department. Reference to this DMP must be given in all contracts for lot sales.

(i) Project proposals shall include facilities for the proper handling of litter, waste, refuse and petroleum products, where applicable;

(j) Where docks and piers are to be constructed over tidelands utilized for shellfish culture or other mariculture activity, the Department will consider rights of the lessee and the public prior to approval or denial.

(k) Docks cannot be enclosed by walls or screens.

(l) Docks longer than 1,000 feet over critical area are prohibited. This is inclusive of pierheads, floats, boatlifts, ramps, mooring pilings and other associated structures.

(m) Handrails, if proposed, shall be limited to a maximum height of 36” above the walkway or pierhead decking.

(n) Docks must extend to the first navigable creek, within extensions of upland property lines or corridor lines, that has a defined channel as evidenced by a significant change in grade with the surrounding marsh; or having an established history of navigational access or use. Rare geographic circumstances, such as very close proximity of a significantly larger creek within extensions of property or corridor lines, may warrant dock extension to a creek other than the first navigable creek. A creek with an established history of navigational use may also be considered as navigable. Such creeks cannot be bridged in order to obtain access to deeper water. However, pierheads must be located over open water and floating docks that rest upon the bottom at mean low tide will not normally be permitted. In exceptional cases, the Department may allow an open water channel to be bridged if current access is prohibited by other man made or natural restrictions or if site-specific conditions warrant such a crossing.

(o) This section applies to lots subdivided or resubdivided after May 23, 1993. Additionally, lots subdivided or resubdivided after June 27, 1997 must meet the minimum, local requirements to construct a

habitable structure in order to qualify for a dock.

(i) To be eligible for a private, community or commercial dock, a lot must have:

(a) 75 feet of frontage at the marsh edge, and

(b) 75 feet between its extended property lines at the location in the waterbody of the proposed dock.

(ii) Joint use docks will be considered for adjacent waterfront properties each of which must have:

(a) 50 feet of frontage at the marsh edge, and

(b) 50 feet between its extended property lines at the location in the waterbody of the proposed dock.

(iii) Lots less than 50 feet wide are not eligible for a dock.

(p) No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(q) If a dock is destroyed, the dock may be rebuilt to its previous configuration so long as reconstruction is completed within five years of the date of the event unless there are extenuating circumstances justifying more time.

(r) In the event that a dock owner intends to change the use of a dock from the permitted use or non-permitted grandfathered use, a new permit must be obtained prior to the change in use. The change in use is based on the types of docks distinguished by these regulations.

(2) The following standards in addition to those in R.30-12(A)(1) are applicable for the construction of private and joint use docks:

(a) Storage on docks will be limited to a bench-like locker no larger than 3 feet high, by 3 feet deep, by eight feet long.

(b) Walkways leading to a dock or pier shall not exceed 4 feet in width. For handicapped access, the Department may utilize The Americans with Disabilities Act (ADA) recommendations for walkway width and other structural configurations. Reference 28 CFR Part 36.

(c) The Department sets forth the following standards for size and use of pierheads and floating docks. Total allowable dock square footage as used in this section includes the areas of any fixed pierheads, floating docks, the area of boat storage docks, additional areas covered by a roof, and areas bounded by an unroofed boat lift, davit or similar structure; and excludes walkways, ramps, mooring buoys, and mooring piles. For boatlifts, davits, or similar structures the square footage will be determined by the area bounded by the structure or 120 square feet, whichever is greater. Where otherwise allowed by these regulations, the Department will allow an applicant to choose either one boat lift or one boat storage dock with an impact area not to exceed 160 square feet that will not count against the total allowable dock square footage. For purposes of determining creek width, if marsh vegetation does not exist, the Department will utilize other indicators of channel width such as changes in grade and the critical area boundary. Lots in subdivisions with approved DMPs as of May 24, 2002, are exempt from R.30-12.A(2)(c)(i) and (ii) as amended on May 24, 2002. R.30-12.A(2)(c)(i) and (ii) as amended on May 24, 2002, does not apply to lots of record that existed as of May 24, 2002, until the later of July 1, 2007, or the expiration of any permit issued prior to that date.

(i) Docks will not be permitted on creeks less than 10 feet wide as measured from marsh vegetation on each side.

(ii) Docks will not be permitted on creeks less than 20 feet wide as measured from marsh vegetation on each side unless one of the following two special geographic circumstances exists: a lot has greater than 500 feet of water frontage or no potential access via dockage from the opposite side of the creek. If special geographic circumstances exist, total allowable dock square footage will be restricted to 50 square feet. Boat lifts, davits, and boat storage docks will not be permitted on any dock allowed in creeks less than 20 feet wide.

(iii) On creeks between 20 and 50 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 120 square feet unless special geographic circumstances and land uses warrant a larger structure.

(iv) On creeks between 51 and 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 160 square feet unless special geographic circumstances and land uses warrant a larger structure.

(v) On creeks larger than 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 600 square feet unless special geographic circumstances and land uses warrant a larger structure~~;~~.

(vi) Grandfathered or previously permitted fixed and floating docks which are larger than allowed in R.30-12(A)(2)(c)(ii-v) may not be enlarged.

(vii) Enclosed boathouses are prohibited.

(viii) Boats moored at docks cannot restrict the reasonable navigation or public use of State lands and waters. Under no circumstance are live-aboards allowed at private docks. Commercial activities are prohibited at private docks unless they are water-dependent and approved by the Department. Illegal use of a private dock is grounds for permit revocation.

(ix) Boat storage docks, elevated boatlifts or davits will not count against the total dock square footage as outlined in 30-12.A(2)(c)(ii-vi) if the size of the structure is 8 feet by 20 feet or less. The area of any larger structure greater than 160 square feet will count against the total allowable dock square footage.

(d) Roofs on private docks will be permitted on a case-by-case basis, with consideration given to the individual merits of each application. Precedent in the vicinity for similar structures will be considered as well as the potential for impacting the view of others. Roofs that have the potential to seriously impact views will not be allowed, while those that have minimal impact may be allowed. The following standards will be used in evaluating applications for roofs.

(i) Roofs shall be clearly shown on the public notice application drawings, and described in the written description of the project. Attics or enclosed ceiling storage on roofed docks are prohibited.

(ii) Flat roofs are prohibited. Where a roof is otherwise permissible, maximum allowable roof height shall be 12' as measured from the floor decking of the dock to the highest point of the roof including any ornamental structures.

(iii) Rails on decks are not to be incorporated into roofs and no steps, ladders or other means of accessing the roof on a permanent basis are allowed.

(e) Boat lifts or davit systems are allowed, provided the entire docking system is limited to the minimum structure size needed to accomplish the intended use. The following standards will be used in evaluating applications for boatlifts and davits:

(i) Single family docking facilities will be normally limited to one lift per structure.

(ii) Hull scraping, sandblasting, painting, paint removal, and major engine repair are prohibited on lifts and davits.

(iii) Boat lifts must be open sided with no enclosures. Catwalks are allowed to provide access on one side and shall be a maximum of 3 feet wide.

(3) The following procedures in addition to those in R.30-12(A)(1) will be followed for docks covered by Dock Master Plans (DMPs):

(a) A permit may be issued for docks covered by a DMP, as outlined in CH.III.VI.D of the Coastal Zone Management Plan. This permit for multiple docks must be placed on public notice and processed as a major application. If a DMP is approved by the Department, but no permit is applied for or issued, the approved DMP will be used as a framework for future permitting decisions, subject to comments received during the public review process.

(b) Before individual structures covered by the permit are constructed, written notice must be given to and a construction placard received from the Department to insure the docks are built according to the plan.

(c) Major modifications of individual structures that would require a new public notice will not be permitted; however those modifications that are minor in nature will be considered as long as the request is in keeping with the spirit of the DMP.

(d) If the permit expires before all of the docks permitted have been constructed, subsequent permit applications for the remaining structures will be reviewed for consistency with the DMP unless the DMP no longer reflects Department policies and regulations.

(e) Extensions of permits for multiple docks will be issued upon a showing of significant activity under the permit.

(4) The following standards in addition to those in R.30-12(A)(1) apply to construction of commercial docks that are not marinas:

(a) The size and extension of the dock must be limited to that which is reasonable for the intended use and the geographic circumstances of the site. However, no docks will be permitted in creeks less than 20 feet wide as measured from marsh vegetation on each side.

(b) Each applicant for a commercial dock must submit an Operations and Maintenance Manual with the permit application.

(c) New commercial docks are not allowed in waters classified for shellfish harvesting if their proposed uses would result in the closure of additional waters for shellfish harvesting.

(d) Commercial docks should be located in areas that will have minimal adverse impact on wetlands, water quality, wildlife and marine resources, or other critical habitats.

(e) Where commercial dock construction would affect shellfish areas, the Department must consider the rights of the lessee, if applicable, and the public, as well as any possible detrimental impacts on shellfish resources.

(f) Project proposals shall include facilities for the proper handling of litter, waste and other refuse in accordance with DHEC regulations.

(g) Adequate parking for users of the commercial dock shall be demonstrated.

(h) The criteria for determining roof construction described in 30-12A(2)c apply to commercial docks.

(5) The following standards in addition to those in R.30-12(A)(1) apply to construction of community docks that are not marinas:

(a) The size and extension of the community dock must be limited to that which is reasonable for the intended use.

(b) No leasing or other transfer of space to individuals who do not reside in the community or other commercial uses are allowed at community docks.

(c) Community docks are strongly encouraged and will only be permitted in lieu of multiple single-family docks. Eliminating private docks on small creeks in exchange for permitting of community docks on larger waterbodies minimizes environmental impacts. If a sufficient number of private docks are eliminated, the Department will consider permitting more than one community dock for a subdivision provided no applicable Department regulations are contravened. The ratio for determining community dock size (or slip moorage) in exchange for single-family docks will be 2 to 1 or 40 feet of community dock length for each private dock that is eliminated. If a joint use dock is eliminated, the number of lots served by the dock will count as the number of docks eliminated.

(d) No section of any community dock (pierheads or other associated structures) will be permitted closer than 20 feet from extended property lines. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(e) Community docks will be prohibited on creeks less than 20 feet in width, however on creeks larger than 20 feet the size of the structure will be determined by the language in 30-12.A(5)(a) as well as (c).

(f) Walkways leading to a dock or pier shall not exceed 6 feet in width. For handicapped access, the Department may utilize The Americans with Disabilities Act (ADA) recommendations for walkway width and other structural configurations. Reference 28 CFR Part 36.

Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:
R.30-1, Statement of Policy, and
R.30-12, Specific Project Standards for Tidelands and Coastal Waters

Purpose of Regulation: The regulatory changes will specify which standards apply to which types of docks. New language will provide the Department with more incentives for the construction of community docks in lieu of multiple private docks. The changes address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice.

Legal Authority: S.C. Code Section 48-39-10 *et seq*., Coastal Tidelands and Wetlands Act, 1976

Plan for Implementation: The amendments make changes to and will be incorporated into R. 30-1 and 30-12 upon approval of the General Assembly and publication in the State Register. The amendments will be implemented, administered, and enforced by existing staff and resources.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary to add clarity to existing regulations and enable Department staff to more effectively administer the regulatory program of the Coastal Division.

DETERMINATION OF COSTS AND BENEFITS:
1) Promulgation and administration of this amendment is estimated to have no significant economic impacts to the state. Benefits to the state will include improved management of coastal resources through increased clarity of the regulations and better protection of important coastal habitats.
2) Promulgation and administration of this amendment is estimated to have no significant economic impacts to entities regulated or result in cost increases to the general public. Those regulated may benefit from the increased incentives for the construction of community docks in lieu of multiple individual docks. Public benefits may be evident in improved management of coastal resources through increased clarity of the regulations and better management of public trust lands.
See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments refine the Department's ability to manage public usage of coastal resources, and enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B)(6):

These revisions provide additional clarity and specificity to the existing regulations. The revisions are not significant changes and can be described as administrative refinement of existing Department policy. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The revisions are based on staff judgment and address questions from the regulated community regarding particular sections of the existing regulations.

Resubmitted May 11, 2005

Document No. 2929
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30
Statutory Authority: S.C. Code Section 48-39-10 *et seq*.

R.30-1 Statement of Policy, and
R.30-12 Specific Project Standards for Tidelands and Coastal Waters

Synopsis:

The regulatory changes clarify language related to the permitting of marinas and add standards to make the marina regulations consistent with the dock regulations. Additionally, new language provides the Department with more incentives for the construction of community docks, which are defined as marinas if they can moor more than 10 vessels, in lieu of multiple private docks. The changes address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language will make the Department's regulations more user-friendly and specific.

Changes requested by Legislature during 2005 review:

SECTION	CHANGE
30-1.D(30)(c)	Change the length defining a marina from 200 feet to 250 feet.
30-12.E	Change the length defining a marina from 200 feet to 250 feet.

Discussion of DHEC Revisions submitted for 2005 Legislative Review:

These revisions will 1) clarify the definitions for marinas, 2) encourage the construction of community docks in lieu of private docks, 3) establish standards for marinas consistent with the standards for docks, and 5) make other changes as necessary to provide clarity, consistency and correctness in the use of terms, grammar and punctuation.

SECTION	CHANGE
30-1.D(30)	Clarify that the marina definition relates to effective docking space. Correct punctuation and renumber.
30-12.E	Amend language to clarify that this section applies to all marinas defined in 30-1(D). Amend this section to remove confusing references to community and commercial docks and use the term marina consistently throughout. Make changes throughout this section to address issues related to grammar, punctuation and consistent use of terms and language. Renumber sections in proper alphanumeric sequence.

30-12.E(1) – (4)	30-12.E(1) – (4) is renumbered to 30-12.E(1)(a) – (x).
30-12.E(1)	Delete existing language and insert in revised 30-12.E(1) language explaining that the standards applicable to all marinas are included in this section. Move language related to water quality monitoring to renumbered 30-12.E(3). Make the requirement for an Operations and Maintenance Manual new subsection 30-12.E(1)(a).
30-12.E(2)	Delete.
30-12.E(3)	Renumber as subsections 30-12.E(1)(b) – (c) and E(1)(c)(i) – (iii). Renumber as subsection 30-12.E(1)(b) the language regarding marina impact on habitat and the requirement for a comprehensive site plan. Renumber as subsection 30-12.E(1)(c) the prohibition on new marinas in shellfish harvesting waters, add language referencing the marina definition, and add dry stack marinas to those allowed in shellfish harvesting waters.
30-12.E(3)(a)	Renumber as subsection 30-12.E(1)(c)(i). Make grammar and usage corrections and add the abbreviation DNR.
30-12.E(3)(b)	Renumber as subsection 30-12.E(1)(c)(ii) and renumber (i) through (xi) as (1) through (11), making no changes to the text.
30-12.E(3)(c)	Renumbers as subsection 30-12.E(1)(c)(iii). Change OCRM to Department.
30-12.E(4)	Delete 30-12.E(4) introductory language and renumber 30-12.E(4)(a) as subsection 30-12.E(1)(d).
30-12.E(1)(e)	Add new subsection requiring marinas to extend to the first navigable creek and limiting the location of pierheads and floats to areas of open water.
30-12.E(1)(f)	Add new subsection requiring a minimum 150 feet of frontage to provide equity with the dock regulations and protect the use and enjoyment of adjacent property owners.
30-12.E(1)(g)	Add new subsection requiring marinas to stay within 20 feet of extended property lines to provide equity with the dock regulations and protect the use and enjoyment of adjacent property owners.
30-12.E(1)(h)	Add new subsection allowing existing marinas to be rebuilt if destroyed. If they do not meet the frontage and offset requirements they can only expand in a channelward direction. When marinas are rebuilt or expanded they must meet the Department's existing operation standards.
30-12.E(1)(i)	Add new subsection allowing marinas for the exclusive use of occupants of the adjacent development to be permitted only in lieu of multiple private docks, establishing a ratio of 50 feet of slip length for every private dock eliminated, and prohibiting the transfer of space to non-occupants.
30-12.E(1)(j)	Add new subsection to include language prohibiting marinas from restricting navigation consistent with the standards in the dock regulations.

30-12.E(1)(k)	Add new subsection to include language requiring marinas to minimize impacts on water flow, currents and circulation and prohibiting construction of dead-end or deep canals.
30-12.E(1)(l)	Add new subsection to include language requiring marinas to be limited in size to that reasonable for the intended use consistent with the standards in the dock regulations.
30-12.E(1)(m)	Add new subsection to include language requiring marinas to use the least environmentally damaging alignment consistent with the standards in the dock regulations.
30-12.E(4)(b)-(g)	Renumber as 30-12.E(1)(n) – (s). In new 30-12.E(1)(n), change which to that in the second sentence. For new 30-12.E(1)(n) – (s), change semicolons to periods with no text changes except in new 30-12.E(1)(q), delete 'usually' for purposes of clarity.
30-12.E(4)(h)	Renumber as 30-12.E(1)(t) and amend language to provide consistent reference to Department regulations.
30-12.E(4)(i) and (j)	Renumber as 30-12.E(1)(u) and (v).
30-12.E(4)(k)	Renumber as 30-12.E(1)(w). Add language clarifying that adequate parking is the greater of one space for every three slips or applicable local government parking regulations.
30-12.E(4)(l)	Renumber as 30-12E.(1)(x).
30-12.E(5)	Renumber as 30-12.E(2). Delete parenthetical explanation for consistency with marina definition.
30-12.E(5)(a)	Renumber as 30-12.E(2)(a) and change SCDHEC to the Department for consistency.
30-12.E(5)(b)	Renumber as 30-12.E(2)(b) and include existing language requiring remedial action of water quality monitoring indicates a decline in water quality.
30-12.E(5)(c)	Renumber as 30-12.E(2)(c) and correct code reference.
30-12.E(5)(d)	Renumber as 30-12.E(2)(d).
30-12.E(6)	Renumber as 30-12.E(3). Add language clarifying that the requirement for an operations and maintenance manual can be waived by the Department if the uses of the facility so warrant. Renumbered subsections 30-12.E(3)(a), E(3)(a)(i) – (iv) remain the same. Renumbered 30-12.E(3)(b) and (b)(i) remain the same. Renumbered 30-12.E(3)(b)(ii) and (iii) rename SCDHEC to the Department. Renumbered 30-12.E(3)(b)(iv) – (x) remain the same. Renumbered 30-12.E(3)(c) is revised to add language clarifying that the water quality monitoring program may be discontinued or waived at the discretion of the Department. Renumbered 30-12.E(3)(c)(i), (iii) and (iv) remains the same. Renumbered 30-12.E(3)(c)(ii) is revised to correct acronym usage and remove unnecessary word. Renumbered 30-12.E(3)(d) remains the same.
30-12.E(7)	Delete this section containing standards for community docks in its entirety.

Instructions: Amend R.30-1 and 30-12 pursuant to each individual instruction provided below with the text of the amendment.

Text of Amendments:

Amend R.30-1.D by changing the definition for marinas to read:

(30) Marinas - a marina is any of the following:

(a) locked harbor facility;

(b) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);

(c) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;

(d) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or

(e) a dry stack facility.

Amend R.30-12.E to read:

E. Marinas, including commercial and community docks with more than 250 linear feet of effective docking space.

(1) In addition to standards applicable for bulkheads and seawalls, dredging and filling, and navigation channels and access canals, the following standards apply to all structures defined as marinas in 30-1(D):

(a) Each applicant for a marina must submit an Operations and Maintenance Manual with the permit application. This Operations and Maintenance Manual must be in accordance with 30-12(E)(6), and approved in writing by the Department staff. The requirements for the Operations and Maintenance Manual may be modified if deemed necessary by the Department.

(b) All marinas affect aquatic habitats to some degree, but adverse effects can be minimized by utilizing proper location and design features. Applications for marinas shall include a comprehensive site plan showing location and number of all water-dependent and upland facilities such as parking and storage facilities.

(c) New marinas, which includes all structures defined as marinas in 30-1(D), are not allowed in waters classified for shellfish harvesting, except for any locked harbor, dry stack or expanded existing marina that does not close any additional waters for shellfish harvesting.

(i) An applicant for any marina in waters classified for shellfish harvesting~~,~~ can request that the S.C. Department of Natural Resources (DNR) comment in writing on whether the area around the proposed marina is suitable or not suitable for the natural growth and propagation of shellfish. The permit shall not be issued unless the Department, after giving great weight to the comments of the DNR, determines that natural physical conditions in the area surrounding the proposed marina preclude the natural propagation of shellfish.

(ii) The DNR's comments shall be based on criteria including:

(1) intertidal bottom types (including shell matrix depth and composition - shell, clay, silt);

(2) density of naturally occurring oyster beds (oyster strata types, bottom coverage, acreage);

(3) presence or absence of significant subtidal oyster populations;

(4) water depth;

(5) oyster population elevations;

(6) salinity regimes (including a review of historic data and recognition of possible future changes that could affect hydrography);

(7) presence or absence of significant clam populations;

(8) potential for expansion of existing natural oyster beds through cultivation;

(9) potential for shellfish production with non-traditional methods;

(10) the current shellfish management and water quality classifications;

(11) and any other factors relating to the natural physical conditions in the area deemed appropriate by the DNR including whether the area is likely to support the natural growth and propagation of shellfish in the reasonably foreseeable future.

(iii) This determination in no way affects or limits the ability of DNR to comment on the entire permit application before the Department.

(d) Marinas should be located in areas that will have minimal adverse impact on wetlands, water quality, wildlife and marine resources, or other critical habitats~~;~~.

(e) Marinas must extend to the first navigable creek, within extensions of upland property lines or corridor lines, that has a defined channel as evidenced by a significant change in grade with the surrounding marsh; or having an established history of navigational access or use. Rare geographic circumstances, such as very close proximity of a significantly larger creek within extensions of property or corridor lines, may warrant marina extension to a creek other than the first navigable creek. A creek with an established history of navigational use may also be considered as navigable. Such creeks cannot be bridged in order to obtain access to deeper water. However, pierheads must be located over open water and floating docks which rest upon the bottom at mean low tide will not normally be permitted. In exceptional cases, the Department may allow an open water channel to be bridged if other man made or natural restrictions prohibit current access or if site-specific conditions warrant such a crossing.

(f) To be eligible for a marina, a lot must have a minimum of 150 feet of frontage at the marsh edge, and 150 feet between its extended property lines at the location in the waterbody of the proposed structure.

(g) No marinas or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of common marinas shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(h) Existing permitted and grandfathered marinas as of the effective date of these regulations may be maintained and rebuilt to their pre-existing size and configuration if damaged or destroyed. However, these marinas cannot expand beyond their current footprint if such expansion violates the requirements of 30-12.E(1)(g) and (h). Marinas that do not meet the frontage and offset requirements of 30-12.E(1)(g) and (h) may expand channelward provided all other applicable Department standards are met. Additionally, at such time as these marinas expand, even when remaining within their existing footprint, a permit will be required and applicable Department standards, including 30-12.E(2) and (3) relating to operation and maintenance, must be met.

(i) Marinas proposed for the exclusive use of occupants of the adjoining development will only be permitted in lieu of multiple private docks. Eliminating private docks on small creeks in exchange for permitting a marina with private slips on a larger waterbody is the preferred alternative of the Department. To determine the number of slips allowed within this type of marina, a ratio of 2.5 to 1 or 50 feet of slip length for every private dock (or lot served by a joint use dock) eliminated will be utilized. No leasing, or other transfer of space to individuals who do not reside in the community or other commercial uses are allowed at these marinas.

(j) Marinas shall not restrict the reasonable navigation or public use of State lands and waters.

(k) Marinas shall be constructed in a manner that does not restrict water flow and must avoid or minimize the disruption of currents. Dead-end or deep canals without adequate circulation or tidal flushing will not be permitted.

(l) The size and extension of the marina must be limited to that which is reasonable for the intended use.

(m) Marinas should use the least environmentally damaging alignment.

(n) Where marina construction would affect shellfish areas, the Department must consider the rights of the lessee, if applicable, and the public, and any possible detrimental impacts on shellfish resources.

(o) Marinas should be located in areas where the least initial and maintenance dredging will be required. New marinas that require initial and maintenance dredging must provide a permanent, dedicated spoil area capable of holding both the initial dredge volume and all anticipated maintenance needs. This spoil area must be reserved using deed restrictions or other legal instruments.

(p) Marinas must avoid or minimize the disruption of currents. Dead-end or deep canals without adequate circulation or tidal flushing will not be permitted.

(q) Marina design must minimize the need for the excavation and filling of shoreline areas~~;~~.

(r) Open dockage extending to deep water is preferable to excavation for boat basins, and it must be considered as an alternative to dredging and bulkheading for marinas~~;~~.

(s) Turning basins and navigation channels shall be designed to prevent long-term degradation of water quality. In areas where there is poor water circulation, the depth of boat basins and access canals should not exceed that of the receiving body of water to protect water quality.

(t) Project proposals shall include facilities for the proper handling of petroleum products, sewage, litter, waste, and other refuse in accordance with Department regulations.

(u) Dry storage type marinas are preferred whenever feasible, and an applicant for a marina permit will be required to show why a dry storage facility is infeasible, in whole or in part. Infeasibility may be shown where the applicant seeks a facility for large boats that cannot be accommodated in a dry storage facility or where there is inadequate upland space for the facility.

(v) Applications for marinas must include maintenance dredging schedules and dredged material disposal sites when applicable.

(w) Adequate parking for users of the marina shall be demonstrated as either one parking space for every three wet and/or dry slips or the spaces required by the applicable local government parking regulation, whichever is greater.

(x) Mooring fields associated with marinas are encouraged in place of pierheads and floating docks where the size of the waterbody and other site specific conditions are suitable. These mooring fields must be in compliance with R.30-12(P).

(2) The following standard conditions, along with any special conditions that may be appropriate, will be included in all permits for marinas unless the Department determines that such standard conditions are inappropriate

(a) The operations of the marina shall be reviewed by the Department as deemed appropriate, but at least every five years. Based on this review, the Department may require, among other things, changes or additions to the Operations and Maintenance Manual to address any water quality or other environmental problems, and a reduction in the size of, or a change in the configuration of, the marina. Such action may be taken at any time the Department determines that significant state water quality compliance problems exist, at the time the Department enlarges the closure area, or at the time of a review.

(b) A water quality sampling program must be instituted and results submitted to the Department. This sampling program must be performed prior to construction and as specified in 30-12(E)(3)(c) below. This sampling must be performed by a Department certified laboratory at the expense of the permittee. If water quality monitoring indicates a decline in water quality, remedial action will be required.

(c) Dredging must be performed in accordance with 30-12(E)(3)(d) and 30-12(G).

(d) A stormwater plan for the marina and associated parking areas, including runoff from the permanent spoil disposal area and adjacent highland development, must be submitted to and approved in writing by the Department staff before any work is performed under the Department permit.

(3) The Operations and Maintenance Manual shall be submitted with the application and placed on public notice. This requirement may be waived at the discretion of the Department upon a determination that the uses of the facility warrant such a waiver. Depending on the type of facility, it shall contain the following information:

(a) Marina Operations

(i) An experienced operator shall be in charge of the marina. The permittee and its agents are responsible for compliance with the issued Operations and Maintenance Manual and with all conditions of the permit.

(ii) The marina permittee must include in the lease agreement with boat owners a provision requiring that boat owners comply with all applicable State and federal regulations. The marina permittee shall ensure that violations are reported promptly to the proper authorities.

(iii) A complete copy of the marina permit, including any required marina report, the Operations and Maintenance Manual, all conditions or requirements placed on the permit and copies of all water quality monitoring reports required pursuant to the permit, shall be readily available at the marina.

(iv) The marina permittee shall prominently display and distribute material pertaining to the maintenance of water quality standards at the marina and report violations of such standards to the proper authorities.

(b) Water Quality Management:

(i) Adequate working wastewater pump-out facilities shall be provided at each marina (unless specific exceptions are allowed in writing by the Department). These facilities must be adequate to handle all wastewater generated at the marina. The marina operator may charge a reasonable fee for the use of the pump-out facilities.

(ii) Adequate bathroom facilities must be provided in order to discourage any overboard discharge of sewage from boats. The number of toilets required for any given marina shall be determined by the nature and size of the marina and by its specific site location. However, two toilets and one lavatory for women and one toilet, one urinal, and one lavatory for men shall be required for all marinas with one hundred or fewer slips, and unless there are mitigating circumstances, the Department shall require one toilet and one lavatory for women and one toilet, one urinal, and one lavatory for men for every additional 100 boat slips or fraction thereof. Toilet facilities shall be constructed in a location to encourage their use. Additional facilities may be required where restaurants, motels, laundries, and other nonwater-dependent structures are located in close proximity to the marina. All pump-out and sewage facilities must be included in the public notice and certified in writing by the Department.

(iii) Plans for potable water supplied to the marina docks must be approved in writing by the Department.

(iv) Marina boat fueling systems must be equipped with emergency cutoffs at the harbor master's office, at the tank, at the pump and at the dock's edge.

(v) Depending on the size and type of boats using the marina, adequate booms must be available to isolate any oil spill around the fuel dock, a leaking boat, or a sunken boat.

(vi) Absorbent pads must be available at the marina for boat use and for removing incidental spills during fueling operations.

(vii) The discharge of sewage from boats is prohibited unless it is treated by a Marine Sanitation Device and complies with all applicable federal laws and regulations. The discharge of any other kind of waste into state waters, including, without limitation, garbage, refuse, trash or debris, is prohibited.

(viii) Adequate separate refuse containers for garbage shall be available at the marina and maintained daily. Containers for toxic substances shall not be placed over or near the water.

(ix) Boat repairs, paint scraping, boat painting, and other activities that may result in a discharge of waste or pollutants into State waters are prohibited;

(x) One reasonably sized dock master’s office may be constructed within a permitted marina. This office will be limited to water dependent uses only such as fuel sales. Restroom facilities may be placed in this office, however, food and beverage services, clothing sales and other non-water dependent uses are prohibited.

(c) Water Quality Monitoring Requirements The specific program shall be determined by the Department. Any changes in requirements must be approved in writing by the Department. Sampling results must be supplied to the Department. The program may be discontinued or waived by the Department upon a showing that such information is not necessary to insure adequate protection of coastal resources.

(i) Monitoring requirements shall be tailored to the marina based on factors such as flushing, existing water quality, presence of shellfish, number of slips, and presence of fueling facilities.

(ii) A minimum standard monitoring program will consist of an annual sediment analysis. These samples shall be taken once a year between June and August with a minimum of one composite sample taken within the confines of the marina and one sample taken outside the marina. All sampling sites must be approved in writing by the Department staff and the DNR. Samples will be analyzed for polyaromatic hydrocarbons, copper, zinc, lead, cadmium, chromium, and any other parameters required by the Department

(iii) Marinas in poorly flushed areas may be required to sample other parameters such as dissolved oxygen and/or fecal coliform bacteria. These monitoring requirements will be determined on a site-specific basis using the factors presented in (i) above.

(iv) Sampling requirements will be periodically reviewed and may be increased or reduced as conditions warrant.

(d) Dredging:

(i) Unless otherwise allowed by permit, all initial and maintenance dredging shall take place between December 1 and March 1, and all dredging shall be performed by hydraulic dredge.

(ii) Agitation dredging is prohibited.

Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:
R.30-1, Statement of Policy, and
R.30-12, Specific Project Standards for Tidelands and Coastal Waters

Purpose of Regulation: The regulatory changes will clarify language related to the permitting of marinas. New standards applicable to new marinas are added to make the marina standards consistent with the dock standards. Additionally, language is added to provide the Department with more incentives for the construction of community docks, which are defined as marinas if they can moor more than 10 vessels, in lieu of multiple private docks.

Legal Authority: S.C. Code Section 48-39-10 *et seq*., Coastal Tidelands and Wetlands Act, 1976

Plan for Implementation: The proposed amendments make changes to and will be incorporated into R. 30-1 and 30-12 upon approval of the General Assembly, and publication in the State Register. The proposed amendments will be implemented, administered, and enforced by existing staff and resources.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary to add clarity to existing regulations and enable Department staff to more effectively administer the regulatory and enforcement programs of the Coastal Division.

DETERMINATION OF COSTS AND BENEFITS:
1) Promulgation and administration of this amendment is estimated to have no significant economic impacts to the state. Benefits to the state will include improved management of coastal resources through increased clarity of the regulations and better protection of important habitats.
2) Promulgation and administration of this amendment may have limited economic impacts to entities regulated. However, the amendment will not result in cost increases to the general public. These amendments may result in increased cost for the construction of new marinas. However, the majority of existing marinas comply with the new requirements included herein, so increased costs should be minimal. These amendments, which contain new water frontage and adjacent property offsets, will protect public trust lands and waters as well as the use and enjoyment of property owners adjacent to new marinas. Those regulated may benefit from the increased incentives for the construction of community docks, which are marinas, in lieu of multiple individual docks. Public benefits may be evident in improved management of coastal resources through increased clarity of the regulations and better management of public trust lands.
See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments will refine the Department's ability to manage public usage of coastal resources, and will enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations as proposed will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B)(6):

These revisions provide additional clarity and specificity to the existing regulations. The revisions do include new standards that provide consistency between the marina and dock regulations. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The revisions are based on staff judgment and address questions from the regulated community regarding particular sections of the existing regulations.

Document No. 2946
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-150-370

62-900.85–140 South Carolina HOPE Scholarship

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-900.85-140 of the South Carolina HOPE Scholarship Program. The proposed amendments will clarify the policies and procedures for administering the South Carolina HOPE Scholarship Program. Beginning with the 2005-06 academic year, the proposed amendments will allow active duty service members of the United States Armed Forces to receive the maximum number of terms of scholarship eligibility due to military mobilization. The proposed regulation also removes language from the definition of independent institutions discontinuing participation of Johnson and Wales University as an eligible independent institution (since they have relocated out-of-state). The proposed regulations will clarify the eligibility criteria for home school students. The proposed regulation for the Palmetto Fellows Scholarship Program was published in the *State Register* on December 24, 2004. The Commission on Higher Education conducted a public hearing on January 6, 2005.

Instructions: Add new R.62-900.85 through 62-900.140, South Carolina HOPE Scholarship Program, to Chapter 62 regulations.

Text:

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62-900.85 Purpose of the SC HOPE Scholarship Program

The South Carolina HOPE Scholarship, established under the South Carolina Education Lottery Act, was approved by the General Assembly during the 2001 legislative session and signed into law on June 13, 2001. Act 356 authorizes the Commission on Higher Education to promulgate regulation for administration of the SC HOPE Scholarship Program. The purpose of the SC HOPE Scholarship Program is to provide funding to first-time entering freshmen who do not qualify for the LIFE or Palmetto Fellows Scholarships.

62-900.86 Funding

A. Funds made available for SC HOPE Scholarships under the South Carolina Education Lottery Act shall be included in the annual appropriation to the Commission on Higher Education. This program is dependent upon the annual proceeds generated by the lottery. The Commission on Higher Education shall award funds to eligible students as SC HOPE Scholarships.

62-900.90 Program Definitions

A. "Academic year" is defined as the twelve month period during which a full-time student is expected to earn thirty credit hours. The period of time used to measure the academic year will consist of fall, spring, and summer terms or spring, summer, and fall terms (or its equivalent).

B. "Baccalaureate program" is defined as a program of study leading to a bachelor's degree as defined by the U.S. Department of Education for participation in Federally funded financial aid programs.

C. "Book allowance" shall mean funds that may be applied to the student's account for expenses towards the cost-of-attendance including the cost of textbooks.

D. "Cost-of-attendance" as established by Title IV Regulations may include tuition, fees, living expenses, and other costs such as costs related to disability or dependent care.

E. "Degree-seeking undergraduate student" is defined as any full-time student enrolled in an eligible program of study at an eligible institution.

F. "Eligible institution" shall be defined as a public or independent bachelor's level institution.

G. "Eligible program of study" is defined as a program of study leading to the first baccalaureate degree, which meets all other Title IV regulations as authorized by the U.S. Department of Education for participation in federally funded financial aid programs.

H. "Freshmen year" shall mean the first academic year the student matriculates in an institution after high school graduation or completion of an approved home school program.

I. "Full-time student" shall mean a student who has matriculated into an eligible program of study and who enrolls full-time, usually fifteen semester credit hours for fall and spring terms or twelve credit hours for fall, eight credit hours for winter, and twelve credit hours for spring trimester terms. In order for the student to be eligible for scholarship disbursement, the student must be enrolled full-time as stipulated by Title IV Regulations, except that credit hours may not include remedial/developmental and continuing education courses.

J. "High school" is defined as a high school located in South Carolina, an approved home school program as defined in the State Statute, Sections 59-65-40, 45, and 47, or a preparatory high school located outside of the state while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student. A "preparatory high school" (out-of-state) is defined as a school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

K. "Home institution" shall mean the institution where the student is currently enrolled as a degree-seeking student and may be eligible for financial aid at the same institution.

L. "Independent institutions" are those institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an "independent institution of higher learning means any independent eleemosynary junior or senior college chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution who had a major campus and headquarters located within South Carolina and was accredited by the Southern Association of Colleges and Secondary as of March 17, 2004." Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of 'independent institution' for purposes of this chapter. However, independent two-year institutions are not eligible for participation in this program.

M. "Initial college enrollment" shall mean the first time the student matriculates into a post secondary educational institution after high school graduation or completion of an approved home school program. The terms of eligibility are based upon initial college enrollment and continuous enrollment. This means that any break in enrollment (excluding summer) will count against the maximum terms of eligibility.

N. An "offense" shall mean a violation of any law or rule in any State or Federal criminal justice system.

O. "Public institutions" are those four-year baccalaureate degree granting institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates "public higher education shall mean state supported education in the post secondary field." Public two-year institutions and technical colleges are not eligible for participation in this program.

P. "Remedial/developmental coursework" shall mean sub-collegiate level preparatory courses in English, mathematics, and reading.

Q. "South Carolina resident" shall be defined as an individual who satisfies the requirements of residency in accordance with the State of South Carolina Statute for Tuition and Fees, Section 59-112-10, and all related guidelines and regulations promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

R. "Transfer student" shall be defined as a student who has changed enrollment from one institution to an eligible institution.

62-900.95 Student Eligibility

A. To be eligible for a SC HOPE Scholarship, students must:

1. Be a U.S. citizen or a legal permanent resident that meets the definition of an eligible non-citizen under State residency statutes;

2. Be a South Carolina resident for in-state purposes at the time of enrollment at the institution, as set forth by Section 59-112-10 and be either a member of a class graduating from a high school located in this State, a home school student who has successfully completed a high school home school program in this State in the manner required by law, or a student graduating from a preparatory high school outside this State, while

a dependent of a parent or guardian who is a legal resident of this State and has custody of the dependent according to State Statute, Section 59-149-50A;

3. Earn a cumulative 3.0 grade point ratio (GPR) based on the Uniform Grading Scale (UGS) upon high school graduation. No other grading policy will be allowed to qualify for the SC HOPE Scholarship. Grade point ratios must be reported to two decimal places (minimum) and may not be rounded. For example, a student who earns a 2.99 GPR is not eligible. Institutions shall use the final GPR as reported by the high school;

4. Be admitted, enrolled full-time, and classified as a degree-seeking undergraduate student in an eligible institution in South Carolina; and

5. Certify that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, alcohol or other drug related offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit each academic year to the institution testifying to the fact, except that a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or nolo contendere of an alcohol or other drug related misdemeanor offense is only ineligible for the next academic year after the date of the adjudication, conviction or plea.

6. Certify that he/she has not defaulted and does not owe a refund or repayment on any Federal or State financial aid. If a student has an Institutional Student Information Record (ISIR) or its equivalent on file, the ISIR information will be used to verify default status or refund/repayment owed on any Federal or State financial aid. Students who have not completed a Free Application for Federal Student Aid (FAFSA) form must have an affidavit on file to verify that he/she is not in default and does not owe a refund or repayment on any Federal or State financial aid including, a State Grant, Federal Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan and Federal Stafford Loan.

7. For a home school graduate to become eligible for the SC HOPE scholarship, they must be a member of an approved South Carolina home school association that provides a GPR on an official transcript based upon high school graduation on the Uniform Grading Scale. No other grading policy will be allowed to qualify for the HOPE Scholarship. Grade point ratios must be reported to two decimal places (minimum) and may not be rounded.

B. Any credit hours attempted or earned before high school graduation, hours exempted by examination, or Advanced Placement (AP) credit hours do not count against the terms of eligibility.

C. Students who complete their high school graduation requirements prior to the official graduation date reported on the final high school transcript may be eligible to receive the SC HOPE Scholarship pending the approval of the Commission on Higher Education (CHE). The institutional representative must complete and submit an Early Graduation Application Form and all appropriate documentation as deemed necessary by CHE for each student. The student must request and submit a letter from the high school principal verifying that he/she has met all graduation requirements.

D. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on active duty. The credit hours earned will not count against the terms of eligibility.

E. Early graduates who enroll mid-year and are classified as degree-seeking will officially begin their initial college enrollment.

F. SC HOPE Scholarship funds may not be applied to the costs of continuing education or remedial/developmental courses. Twelve credit hours of the course load must be non-remedial/developmental and non-continuing education courses in order to receive SC HOPE Scholarship funds.

G. Students receiving a SC HOPE Scholarship are not eligible for a LIFE Scholarship, Palmetto Fellows Scholarship or Lottery Tuition Assistance.

H. Students who meet all eligibility requirements for the SC HOPE Scholarship are eligible to receive scholarship funds for the freshmen year of attendance only.

I. All documents required for determining SC HOPE Scholarship eligibility must be submitted to the institution by their established deadline(s). Students must submit official transcripts from all previous and current institutions, which provide evidence to determine initial college enrollment.

62-900.100 Duration of Award

A. Students are eligible to receive the SC HOPE Scholarship for no more than two terms (or its equivalent) during the freshman year of attendance only.

B. The maximum number of terms of eligibility is based on the student's initial college enrollment with the exception of credit hours earned during the summer session immediately prior to the student's initial college enrollment.

C. If a student enrolls mid-year (spring term) and receives the SC HOPE Scholarship during that term, then qualifies to receive the LIFE Scholarship at the end of the summer term, the student will not be eligible to receive the SC HOPE Scholarship for the next term. If the student does not meet the requirements to qualify for the LIFE Scholarship, then the student may receive the SC HOPE Scholarship the next term of eligibility.

62-900.105 Transfer Students

A. A student who transfers from one institution to an eligible institution during the freshman year of attendance is eligible to receive the SC HOPE Scholarship if the student met the eligibility requirements as stated in the "Student Eligibility" Section at the beginning of the academic year.

B. A student who transfers from a two-year or technical institution to an eligible four-year institution who enrolled in remedial courses during the freshman year may be eligible to receive the SC HOPE Scholarship. The terms of eligibility to receive scholarship funds must not include the period of time the student was enrolled in remedial courses at a two-year or technical institution, unless the student completed at least twelve credit hours of non-remedial course work during the first term(s) during the freshman year. The student will be eligible to receive the scholarship for the maximum number of terms of eligibility following completion of remediation if the student was eligible to receive the SC HOPE Scholarship upon high school graduation.

62-900.110 Students with Disabilities

A. Students who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in the "Student Eligibility" Section except for the full-time enrollment requirement, if approved by the Disability Services Provider. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid during the freshman year verifying that the student is approved to be enrolled in less than full-time status.

C. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 may receive the maximum number of available terms of eligibility as stated in the "Duration of Award" Section.

D. In order to be eligible for the SC HOPE Scholarship, students who no longer qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must comply with all requirements set forth under the "Student Eligibility" Section.

62-900.111 Military Mobilization

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on the institutional policies and procedures. Additionally, the term(s) that the service member is called to active duty will not count against the maximum terms of eligibility. The service member shall be allowed to receive the unused term(s) while on active duty during the succeeding summer term or at the end of the maximum terms of eligibility based on initial college enrollment. The service member must re-enroll in an eligible institution within twelve months upon their demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the service member re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are called to active duty for an entire academic year may receive the scholarship for the next academic year, if they met the "Student Eligibility" requirements at the time of high school graduation. Service members who did not use the SC HOPE Scholarship funds/terms of eligibility during this period due to active duty shall be allowed to receive scholarship funds during the succeeding summer term and/or at the end of the maximum terms of eligibility based on initial college enrollment.

C. Service members who are enrolled in college and are called to active duty for one academic term and did not use SC HOPE Scholarship funds/terms of eligibility during this period shall be allowed to receive one term of scholarship funds during the succeeding summer or one term at the end of the maximum terms of eligibility based on initial college enrollment.

D. In order to receive the SC HOPE Scholarship for summer school for the unused term(s), the service member must enroll in twelve credit hours during the succeeding summer term at the home institution.

E. The home institution will be responsible for securing verification of active duty status and terms of eligibility based on the service member's initial college enrollment .

62-900.115 Refunds or Repayments

A. In the event a student who has been awarded a SC HOPE Scholarship withdraws, is suspended from the institution, or drops below full-time enrollment status during any term of the academic year, institutions must reimburse the SC HOPE Scholarship Program for the amount of the scholarship for the term(s) in question pursuant to the refund policies of the institution. Collection is the responsibility of the institution.

B. In the event a student withdraws or drops below full-time status after the institution's refund period and therefore must pay tuition and fees for full-time enrollment, the scholarship may be retained pursuant to the refund policies of the institution.

62-900.120 Appeals Procedures

A. The Commission on Higher Education shall define the appeals procedures.

B. Students who did not receive the maximum number of terms of eligibility for the scholarship at the end of the first academic year due to an extenuating circumstance may request an appeal with the Commission on Higher Education.

C. The Commission on Higher Education will allow a student to submit only one appeal at the end of the first academic year based on an extenuating circumstance.

D. A completed appeal's application must be filed with the Commission on Higher Education by the established deadline of the academic year the scholarship is requested. The student must provide a completed application for appeal, a letter requesting an appeal describing the extenuating circumstance, official transcripts from all prior institutions, and any other supporting documentation to substantiate the basis for the appeal.

E. The SC HOPE Scholarship shall be suspended during the appeal period, but will be awarded retroactively if the appeal is granted.

F. The Appeals Committee's decision is final.

62-900.125 Institutional Policies and Procedures for Awarding

A. SC HOPE Scholarship awards are to be used only for payment toward the cost-of-attendance as established by Title IV regulations. The award amount shall not exceed two thousand six hundred fifty dollars (includes $150 book allowance) during the freshman year only. Half shall be awarded during the fall term and half during the spring term (or its equivalent). The SC HOPE Scholarship in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

B. Eligible institutions shall provide an award notification to eligible students that will include the book allowance and also contain the terms and conditions of the scholarship. Institutions will notify students of all adjustments in scholarship funds that may result from an over award, change in eligibility, change in the student's residency or financial status or other matters.

C. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

(1) Award notification
(2) Institutional disbursement to student
(3) Student's residency status
(4) Refund and repayment (if appropriate)
(5) Enrollment and curriculum requirements
(6) Affidavit documenting that the student has never been convicted of any felonies, alcohol or other drug related misdemeanor offenses as stated under "Student Eligibility" Section
(7) Institutional Student Information Record (ISIR) or affidavit documenting that the student is not in default or does not owe a refund or repayment on any State or Federal financial aid
(8) High school transcript(s) verifying high school graduation or home school completion date and cumulative grade point average (freshmen only)
(9) Verification of student's disability (if appropriate)

D. Any student who has attempted to obtain or obtained a SC HOPE Scholarship award through means of willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the SC HOPE Scholarship.

E. It is the institution's responsibility to ensure that only eligible students receive the scholarship.

62-900.130 Institutional Disbursements

A. The eligible institution will identify award amounts, which cannot exceed two thousand six hundred fifty dollars (includes $150 book allowance) for students enrolled at four-year public and independent institutions for the freshmen year of attendance only. Half shall be disbursed during the fall term and half during the spring term (or their equivalents). Scholarships cannot be disbursed during the summer or any interim sessions. The SC HOPE Scholarship in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

B. After the last day to register for each term of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident who is a full-time degree-seeking student. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of all eligible recipients by social security numbers with award amounts for the term must be sent to the Commission on Higher Education with the institution's request for funds. A year end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th of each fiscal year. The reconciliation report shall include any additional requests for funds and/or return of unused funds.

C. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

D. Students must be enrolled full-time at the time of scholarship disbursement. Students who are retroactively awarded must have been enrolled in a minimum of twelve credit hours at the time the scholarship would have been disbursed for that term.

62-900.135 Program Administration and Audits

A. The South Carolina Commission on Higher Education shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulations governing the SC HOPE Scholarship Program, any audits or other oversight as may be deemed necessary to monitor the expenditures of scholarship funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible institutions that participate in the program must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a SC HOPE Scholarship institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the program.

62-900.140 Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program guidelines, rules, or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution's continued participation in the program and require reimbursement to the SC HOPE Scholarship Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply with program rules, regulations, or guidelines, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any public or independent college or university, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant Statutes, pertinent rules, and regulations.

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

Statement of Rationale:

These revisions are proposed to provide additional clarity to the existing regulation. The revisions are not significant changes and can be described as administrative refinement of existing policy. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Commission's staff were relied upon in developing the regulation. The revisions are proposed based on staff judgment and to address questions from the regulated community regarding particular sections of the existing regulations.

Document Number 2948
COMMISSION ON HIGHER EDUCATION
Chapter 62
Statutory Authority: 1976 Code Section 59-104-20

62-300 Palmetto Fellows Scholarship Program

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-300 of the Palmetto Fellows Scholarship Program. The proposed amendments will clarify the policies and procedures for administering the Palmetto Fellows Scholarship Program. Beginning with the 2005-06 academic year, one of the proposed amendments will allow students to rank within the top six percent of the class instead of the top five percent of the class in order to be eligible to apply for the scholarship. The classes used for eligibility will be expanded from the sophomore and junior classes to also include the senior class. Regarding the SAT, students will be allowed more opportunities to meet the minimum 1200 score requirement by adding language to extend the deadline through the June national test administration. The proposed regulation will clarify the eligibility criteria for home school students and students attending out-of-state preparatory high schools. Finally, another proposed amendment will allow active duty service members of the United States Armed Forces to receive the maximum number of terms of scholarship eligibility due to military mobilization. There are also additional clarifications being proposed that will add several definitions and will make minor grammatical changes to promote consistency among the State scholarship and grant programs. The proposed regulation for the Palmetto Fellows Scholarship Program was published in the *State Register* on December 24, 2004. The Commission on Higher Education conducted a public hearing on January 6, 2005.

Instructions: The following regulation will replace in its entirety R.62-300 through 62-370, Palmetto Fellows Scholarship Program, to Chapter 62 regulations.

Text:

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62-300 Purpose of the Palmetto Fellows Scholarship Program

Pursuant to Act 458 which was initially established as Title 59 of the 1976 Code as amended under Section 18A.28 of the 1997-98 Appropriations Bill, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the Palmetto Fellows Scholarship Program. The General Assembly established the Palmetto Fellows Scholarship Program to foster scholarship among the State's postsecondary students and retain outstanding South Carolina high school graduates in the State through awards based on scholarship and achievement. The purpose of the Palmetto Fellows Scholarship Program is to recognize the most academically talented high school seniors in South Carolina and to encourage them to attend eligible colleges or universities in the State. A secondary purpose is to help retain talented minority students who might otherwise pursue studies outside the State.

62-305 Allocation of Palmetto Fellows Scholarship Funds to Public and Independent Institutions

A. Funds made available for higher education grants and scholarships under Chapter 143 of Title 59 of the 1976 Code, as amended under Act 458, South Carolina Children First: Resources for Scholarship and Tuition Act of 1996, shall be included in the annual appropriation to the Commission on Higher Education. Fifty percent of the appropriation shall be designated for the Palmetto Fellows Scholarship Program and the remaining fifty percent shall be for the Need-based Grants Program. However, in instances where the equal division of the appropriated funds between the Palmetto Fellows Scholarship and Need-based Grants Programs exceeds the capacity to make awards in either program, the Commission on Higher Education has the authority to re-allocate the remaining funds between the two programs. The Commission on Higher Education shall award to eligible students attending public or independent eligible institutions as Palmetto Fellows Scholarships as follows:

1. Of the funds allocated to public institutions, the percentage shall be equivalent to the percentage of the public institution's share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year.

2. Of the funds allocated to independent institutions, the percentage shall be equivalent to the percentage of the independent institutions' share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year and will be determined annually by the South Carolina Commission on Higher Education and the Tuition Grants Commission.

B. Under the South Carolina Education Lottery Act, a designated amount shall be allocated for Palmetto

Fellows Scholarships and shall be included in the annual appropriation to the Commission on Higher Education.

C. After expending funds appropriated for Palmetto Fellows Scholarships from all other sources, there is automatically appropriated from the general fund of the State whatever amount is necessary to provide Palmetto Fellows Scholarships to all students meeting the requirements of Section 59-104-20.

62-310 Definitions

A. “Academic year” is defined as the twelve-month period of time during which a full-time student is expected to earn thirty credit hours. The period of time used to measure the academic year will consist of the fall, spring and summer terms (or its equivalent).

B. “Baccalaureate degree program” is defined as an undergraduate program of study leading to the first bachelor's degree at a location approved by the U.S. Department of Education for participation in Federally funded Student Aid Programs.

C. “Degree-seeking student” is defined as any student enrolled full-time in a program of study that leads to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree at an eligible institution.

D. “Full-time student” shall mean a student who has matriculated into a program of study leading to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree and who enrolls full-time, usually fifteen credit hours for fall and spring terms or twelve credit hours for fall, eight credit hours for winter, and twelve credit hours for spring trimester terms. In order for the student to be eligible for scholarship disbursement, the student must be enrolled full-time as stipulated by Title IV Regulations, except that credit hours may not include remedial/developmental coursework.

E. “High school” shall be defined as a public or private high school located within South Carolina, an approved home school program as defined in relevant State Statute (Sections 59-65-40, 45, and 47) or a preparatory high school located outside of the state while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student. A "preparatory high school" (out-of-state) is defined as a school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

F. “Home institution” shall mean the institution where the student is currently enrolled as a degree-seeking student and may be eligible for financial aid at the same institution.

G. “Independent institutions” is defined, for the purposes of the Palmetto Fellows Scholarship Program shall, as those institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an "independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools." However, independent two-year institutions are not eligible for participation in this program.

H. An “offense” shall mean a violation of any law or rule in any state or Federal criminal justice system.

I. “Program of study that is structured so as not to require a baccalaureate degree” is a program of study that is structured so as not to require a baccalaureate degree for acceptance into the program and leads to a graduate degree, which will be the student’s first academic degree awarded, at a location approved by the U.S. Department of Education for participation in Federally funded Student Aid Programs. Students are eligible to receive the scholarship for a maximum of eight terms (or its equivalent) as long as all other eligibility criteria

are met and the program is approved by the Commission on Higher Education. Students who have been awarded a baccalaureate or graduate degree are not eligible for scholarship funding.

J. “Public institutions” is defined, for the purposes of the Palmetto Fellows Scholarship Program shall, as those four-year baccalaureate degree-granting institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates "public higher education shall mean state-supported education in the post-secondary field." Public two-year institutions and technical colleges are not eligible for participation in this program.

K. “Remedial/developmental coursework” shall mean sub-collegiate level preparatory courses in English, mathematics, and reading.

L. “South Carolina resident” shall be defined as an individual who satisfies the requirements of residency in accordance with the state of South Carolina Statute for Tuition and Fees, Section 59-112-10, and all related guidelines and regulations promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

M. “Transfer student” is defined, for the purposes of this program, as a student who has changed full-time enrollment from one eligible institution to another eligible institution.

62-315 Student Eligibility

A. In order to qualify for consideration for a Palmetto Fellows Scholarship, a student must:

1. Be enrolled as a senior in high school and be a legal resident of South Carolina as defined in applicable State Statute governing the determination of residency for tuition and fee purposes at the time of college enrollment;

2. Be a U.S. citizen or a legal permanent resident that meets the definition of an eligible non-citizen under State Residency Statute;

3. Meet the following three criteria: a minimum score of 1200 on the Scholastic Assessment Test (SAT) or equivalent ACT score, and a cumulative 3.5 grade point ratio (GPR) on the Uniform Grading Scale (UGS) at the end of either the junior or senior year, and rank in the top six percent of the class at the end of the sophomore, junior, or senior year (refer to “Student Application” Section);

4. Be seriously considering attending, have applied, or have been accepted for admission to an eligible four-year baccalaureate-granting public or independent college or university in South Carolina as defined under Chapter 143 and Chapter 113 of Title 59 of the 1976 Code as a first-time, full-time, degree-seeking student;

5. Certify that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, alcohol, or drug related offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit each academic year to the institution testifying to the fact, except that a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or nolo contendere of an alcohol or drug related misdemeanor offense is only ineligible for the next academic year after the date of the adjudication, conviction or plea; and

6. Submit the official Palmetto Fellows Scholarship Application by the established deadline(s) and comply with all the directions contained therein.

B. The high schools shall ensure that all students meeting the eligibility criteria are given the opportunity to be included in the applicant pool.

C. A student who graduates immediately after the high school junior year is eligible to apply for the Palmetto Fellows Scholarship, providing that the student meets all eligibility requirements as described in the "Student Eligibility" Section, and providing that the student is entering a participating college or university not later than the fall term immediately following high school graduation.

D. Students receiving a Palmetto Fellows Scholarship are not eligible for a LIFE Scholarship, S.C. HOPE Scholarship or Lottery Tuition Assistance.

E. Any student who attempts to obtain or obtains a Palmetto Fellows Scholarship through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Palmetto Fellows Scholarship.

62-320 Student Application

A. The Commission on Higher Education will send information regarding the application process to all South Carolina high schools. High school officials will identify students who meet the specified eligibility criteria by each established deadline. Applications must be submitted no later than the established deadline(s) along with the appropriate official signatures and the students' official transcripts by the principals to the Commission on Higher Education. Students who are enrolled at out-of-state high schools are personally responsible for contacting the Commission on Higher Education about the application process and must adhere to the same established deadline(s).

B. The high schools shall complete and return a list to the Commission on Higher Education indicating the names of all students who meet the eligibility criteria according to the high school. The list shall indicate whether the student is submitting a completed application or declining the opportunity to submit an application. If the student declines the opportunity to submit an application, the high school will submit a form for each of these students, signed by both the student and the parent/guardian, and indicating the reason(s) for not submitting an application.

C. Applications for early awards must be submitted to the Commission on Higher Education for the Palmetto Fellows Scholarship by the date established in December each academic year. Students must meet the following three academic criteria in order to be eligible to apply for the early awards (students cannot use these criteria to meet the final award criteria):

1. Score at least 1200 on the SAT or 27 on the ACT. Test scores must be submitted to the Commission on Higher Education by no later the established deadline in December;

2. Earn a cumulative 3.50 GPR on the UGS at the end of the junior year. Grade point ratios must be reported to two decimal places (minimum) and may not be rounded; and

3. Rank in the top six percent of the class at the end of either the sophomore or the junior year. Rank percentages must be reported to two decimal places (minimum) and may not be rounded.

D. Applications for final awards must be submitted to the Commission on Higher Education for the Palmetto Fellows Scholarship by the date established in June each academic year. Students must meet the following three academic criteria in order to be eligible to apply for the final awards:

1. Score at least 1200 on the SAT or 27 on the ACT. Test scores will be accepted through the June national test administration of the senior year;

2. Earn a cumulative 3.50 GPR on the UGS at the end of the senior year. Grade point ratios must be reported to two decimal places (minimum) and may not be rounded; and

3. Rank in the top six percent of the class at the end of the senior year. Rank percentages must be reported to two decimal places (minimum) and may not be rounded.

E. Students must have official certification that they earned a score of at least 1200 on the SAT I, or an equivalent ACT score. The Commission on Higher Education shall convert all ACT scores to the equivalent SAT scores. Students must use the highest Math score combined with the highest Critical Reading score (formerly known as the Verbal score). It is permissible to select scores from different test administrations in order to obtain the qualifying composite score. Students cannot use the Writing subsection score to meet the minimum 1200 SAT score.

F. For those high schools that have fewer than forty students in the class, the top two students (students ranked as number 1 and 2) shall be considered for the scholarship regardless of whether they rank in the top six percent of the class. These students must meet all other eligibility criteria.

G. In order to be eligible to apply for the Palmetto Fellows Scholarship, home school students must be a member of an approved home school program (as defined in relevant State Statute) that provides an official class rank for their members. These students must meet all other eligibility criteria.

H. Students who attend out-of-state preparatory high schools may apply on the condition that the preparatory high school can provide an official transcript indicating that the student ranks in the top 6% of the class. In order to meet the GPR requirement, the student may request that the South Carolina public high school the student would have attended (if not enrolled in high school out-of-state) convert the student's grades through the end of the junior year to the Uniform Grading Scale. The student must submit an official letter on the public high school's letterhead to the Commission on Higher Education stating the student's GPR based on the UGS. These students must meet all other eligibility criteria, including South Carolina residency requirements.

62-325 Selection Process

A. The Commission on Higher Education shall notify students of their selection as a Palmetto Fellow along with terms and conditions of the award.

B. Students must notify the Commission on Higher Education of their acceptance of the scholarship and designate the participating institution in which they plan to enroll by the date established by the Commission on Higher Education or forfeit the Palmetto Fellows Scholarship.

C. The Commission on Higher Education shall ensure that there is equitable minority participation in the program.

62-330 Policies and Procedures for Awarding Palmetto Fellows Scholarships

A. The institution shall specify exact award amounts based upon applying the Palmetto Fellows Scholarship Regulation and criteria stipulated herein. The annual award amount for each Palmetto Fellow shall not exceed $6700 per academic year. Half of the scholarship shall be awarded in the fall term and half during the spring term (or its equivalent), assuming continued eligibility.

B. Palmetto Fellows Scholarships are to be used only towards payment for cost-of-attendance as established by Title IV Regulations with modifications set forth in C below for the academic year for which the scholarship is made at the designated institution. The maximum amount awarded shall not exceed the cost-of-attendance as established by Title IV Regulations for any year.

C. Charges for room and board are to be limited as follows:

1. Room charges shall not exceed the average cost of on-campus residential housing; and
2. Board charges shall not exceed the cost of the least expensive campus meal plan that includes 21 meals per week.

D. In determining the amount awarded for the Palmetto Fellows Scholarship, all other sources of gift aid, including Federal, State, private and institutional funds, must be applied to the unmet total cost-of-attendance in accord with Title IV Regulations before calculating the scholarship amount and awarding the scholarship. Adjustments to the financial aid package will be made to the Palmetto Fellows Scholarship in accordance with prescribed Title IV Regulations in order to prevent an over-award.

E. Although a student may be named a Palmetto Fellow, the student may not receive a monetary award if the award, when added to other financial resources, would cause the student to receive total assistance in excess of the student's cost-of-attendance as defined by Title IV Regulations and these guidelines.

F. Participating institutions will notify students of their award along with the terms and conditions of the award.

G. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

1. Institutional Student Information Record (ISIR) or affidavit documenting that the student is not in default or does not owe a refund on any State or Federal financial aid
2. Affidavit documenting that the student has never been convicted of any felonies, alcohol or drug related misdemeanor offenses as stated under “Student Eligibility” and “Duration and Renewal of Awards” Sections
3. Award notification
4. Institutional disbursement to student
5. Refund or repayment (if appropriate)
6. Student’s residency status
7. Enrollment and curriculum requirements
8. Student’s disability (if appropriate)

H. It is the institution's responsibility to ensure that only eligible students receive the scholarship.

62-335 Duration and Renewal of Awards

A. A Palmetto Fellows Scholarship shall be initially awarded for one academic year. The institution shall adjust the amount of the scholarship award during the academic year in the event of a change in the student's eligibility.

B. Students selected as Palmetto Fellows must enter a participating college or university the fall term immediately following high school graduation.

C. A Palmetto Fellows Scholarship may be renewed annually for no more than a total of eight terms (or its equivalent) of full-time study toward the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree. Renewal decisions will be made annually and are not automatically guaranteed. Students who have already been awarded their first baccalaureate or graduate degree are not eligible to receive the Palmetto Fellows Scholarship.

D. The institution shall be responsible for securing institutional certification of each recipient's cumulative grade point average and credit hours earned for purposes of determining eligibility for award renewal. By the end of the spring term, the institution shall notify all Palmetto Fellows who have <u>not</u> met the continued eligibility requirements for the next academic year. The notification should also include information regarding the student’s ability to attend summer school in order to meet the continued eligibility requirements.

E. In order to retain eligibility for the Palmetto Fellows Scholarship after the initial year, the student must meet the following continued eligibility requirements:

1. Enroll full-time at the time of the scholarship disbursement;

2. Earn at least a cumulative 3.0 grade point average (GPA) on a 4.0 scale for graduation purposes by the end of each academic year;

3. Earn a minimum of thirty credit hours for graduation purposes by the end of each academic year. Exempted credit hours (such as AP, CLEP, etc.) and credit hours earned before high school graduation cannot be used to meet the annual credit hour requirement;

4. Certify each academic year that he/she has not defaulted and does not owe a refund or repayment on any Federal or State financial aid. If a student has an Institutional Student Information Record (ISIR) or its equivalent on file, the ISIR information will be used to verify default status or refund/repayment owed. Students who have not completed a FAFSA Form must have an affidavit on file to verify that he/she is not in default and does not owe a refund or repayment on any Federal or State financial aid, including the State Grant, Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan or Federal Stafford Loan; and

5. Certify each academic year that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, alcohol, or drug related offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit each academic year to the institution testifying to the fact, except that a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or nolo contendere of an alcohol or drug related misdemeanor offense is only ineligible for the next academic year after the date of the adjudication, conviction or plea.

F. Any student who attempts to obtain or obtains a Palmetto Fellows Scholarship through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Palmetto Fellows Scholarship.

62-340 Transfer of Palmetto Fellows Scholarship

A. Palmetto Fellows enrolled at an eligible public or independent institution as defined in Chapter 103 of Title 59 of the 1976 Code may transfer the scholarship to another eligible institution upon obtaining prior approval from the Commission on Higher Education.

B. Transfer students shall receive the scholarship for no more than eight terms (or its equivalent) at all institutions attended.

C. Transfer students must comply with all standards for continued eligibility as defined under "Duration and Renewal of Awards" Section in order for their scholarship to be eligible for transfer.

62-345 Students with Disabilities

A. Palmetto Fellows who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in "Student Eligibility" Section except for the full-time enrollment requirement is eligible to receive scholarship funding. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. For renewal, Palmetto Fellows who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must meet all renewal requirements as defined in the "Duration and Renewal of Awards" Section except for a student not meeting the annual credit hour requirement who is approved by the Disability Services Provider to be enrolled in less than full-time status or less than the required number of annual credit hours for that

academic year. Each academic year for scholarship renewal, students must earn the required number of hours approved by the institutional Disability Services Provider and earn a minimum 3.0 cumulative grade point average on a 4.0 scale. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

C. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid each academic year verifying that the student is approved to be enrolled in less than full-time status or less than the required annual credit hours.

D. Palmetto Fellows who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 are eligible to receive up to the maximum number of available terms and available funds.

62-350 Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs

A. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit are eligible to receive Palmetto Fellows Scholarship funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

B. Eligible students may use the appropriated portion of the Palmetto Fellows Scholarship funds for internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit. Palmetto Fellows Scholarship funds must be paid directly to the student's account at the home institution. The amount awarded cannot exceed the cost-of-attendance at the home institution or the cost-of-attendance at the host institution, whichever is less. The Commission on Higher Education will not transfer scholarship funds to the institutions where students will participate in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs. The institution is responsible for scholarship funds according to the "Program Administration and Audits" Section.

C. Students who enroll in one academic term at the home institution and also enroll in an internship, cooperative work program, travel study program, or National or International Student Exchange Program that are approved by the home institution and that do not award full-time transfer credit during the same academic year must earn fifteen credit hours and a cumulative 3.0 grade point average on a 4.0 scale by the end of the academic year to be eligible for scholarship renewal for the next academic year. The student may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended (provided the student meets the continued eligibility requirements).

D. For students enrolling in an internship, cooperative work program, travel study program, or National or International Student Exchange Program that is approved by the home institution but does not award full-time transfer credit for the entire academic year, scholarship renewal for the next academic year will be based on the prior year's eligibility. The student may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended (provided the student meets the continued eligibility requirements).

E. Students enrolling in an internship, a cooperative work program, a travel study program, or National or International Student Exchange Program that are approved by the home institution during the academic year and did not use their entire eligibility for Palmetto Fellows Scholarship funds during this period shall be allowed to receive one term of Palmetto Fellows Scholarship funds during the succeeding summer. In order to receive Palmetto Fellows Scholarship funds for the succeeding summer term, students must enroll in twelve credit hours at the home institution. In order to maintain eligibility for the next academic year for students who only attend summer school, the student must earn twelve credit hours by the end of the academic year. For students who enroll in summer school and one other term of the academic year, the student must earn a total of 27 credit hours (or its equivalent) by the end of the academic year. The student must meet all

continued eligibility requirements, except for the completion of the thirty credit hour requirement for the academic year.

F. The home institution will be responsible for securing official certification of the student's cumulative grade point average and credit hours earned for the purposes of determining eligibility for scholarship renewal for the next academic year.

62-351 Military Mobilization

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on the institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. Additionally, the term(s) that the service member is called to active duty will not count against the maximum terms of eligibility. The service member shall be allowed to receive the unused term(s) while on active duty during the succeeding summer term or at the end of the maximum terms of eligibility (provided the service member meets continued eligibility requirements). The service member must re-enroll in an eligible institution within twelve months upon their demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the service member re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are called to active duty for a minimum of one academic year may renew the scholarship for the next academic year, if they met the continued eligibility requirements at the end of the prior academic year. Service members may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended (provided the service member meets continued eligibility requirements).

C. Service members who are enrolled in college and are called to active duty for one academic term must complete fifteen credit hours and earn a cumulative 3.0 grade point average on a 4.0 scale by the end of the academic year to be eligible for scholarship renewal for the next academic year. Service members may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended (provided the service member meets the continued eligibility requirements).

D. In order to receive the Palmetto Fellows Scholarship for summer school for the unused term(s), the service member must enroll in twelve credit hours during the succeeding summer term at the home institution. For service members who enroll in summer school and one other term of the academic year, the service member must earn a total of twenty-seven credit hours (or its equivalent) by the end of the academic year. In order to maintain eligibility for the next academic year for service members who only attend summer school, the member must earn twelve credit hours by the end of the academic year. The service member must meet all continued eligibility requirements, except for the completion of the thirty credit hour requirement for the academic year.

E. The home institution will be responsible for securing verification of active duty status, cumulative grade point average and credit hours earned for the purposes of determining eligibility for scholarship renewal for the next academic year.

62-355 Appeals Procedures

A. The Commission on Higher Education shall define the procedures for scholarship appeals.

B. A student who does not meet the continued eligibility criteria for renewal of the Palmetto Fellows Scholarship forfeits continued participation in the program and may request an appeal based on extenuating circumstances.

C. A student is allowed to submit only one appeal each academic year.

D. A student wishing to appeal any non-renewal decision based on extenuating circumstances must submit the following source documents to the Commission on Higher Education by no later than the established deadline of the academic year the scholarship is requested:

1. A completed application for appeal
2. A letter requesting an appeal describing the extenuating circumstances
3. An official transcript(s)
4. Any other supporting documentation to substantiate the basis for the appeal

E. A student who fails to submit an appeal by the required deadline will result in forfeiture of the award.

F. The Palmetto Fellows Scholarship shall be suspended during the appeal period, but will be awarded retroactively if the appeal is granted.

G. The Appeals Committee's decision is final.

62-360 Institutional Disbursement of Scholarship Funds

A. The institution will identify award amounts, which cannot exceed $6700 per academic year. Half of each scholarship shall be awarded during the fall term and half during the spring (or its equivalent), assuming continued eligibility. Scholarships cannot be disbursed during the summer or any interim sessions with the exception of disbursements that meet the requirements under the “Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs” or “Military Mobilization” Sections. Palmetto Fellows may not be funded for more than a total of eight terms (or its equivalent) of full-time study toward the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree.

B. The Palmetto Fellows Scholarship may not be applied to remedial/developmental coursework, a second baccalaureate degree or to graduate coursework, unless the graduate coursework is required as part of a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree as defined in the “Program Definitions” Section. In the event of early graduation, the award is discontinued.

C. The institution shall provide an award notification each academic year to Palmetto Fellows recipients, which will contain the terms and conditions of the scholarship and other financial aid awarded. Students will be notified of adjustments in financial aid due to changes in eligibility and/or over-award issues. The Commission on Higher Education, for documentation purposes, requires that each institution obtain verification of acceptance of the Palmetto Fellows Scholarship and terms for the award.

D. After the last day to register for each term of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident who is a full-time degree-seeking student. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of eligible recipients by social security number with the award amounts for the term must be sent to the Commission on Higher Education with the institution's request for funds. A year-end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th.

E. The Commission will disburse awards to the participating institutions to be placed in each eligible student's account.

62-365 Refunds and Repayments

A. In the event a student who has been awarded a Palmetto Fellows Scholarship withdraws, is suspended from the institution, or drops below full-time status during any regular term of the academic year, institutions must reimburse the Palmetto Fellows Scholarship Program for the amount of the scholarship for the term in question pursuant to refund policies of the institution. Collection is the responsibility of the institution.

B. In the event a student withdraws or drops below full-time status after the institution's refund period and therefore must pay tuition and fees for full-time enrollment, the award may be retained by the student pursuant to the refund policies of the institution.

62-370 Program Administration and Audits

A. The South Carolina Commission on Higher Education shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulation governing the Palmetto Fellows Scholarship Program, any audits, or other oversight as may be deemed necessary to monitor the expenditures of scholarship funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible institutions that participate in the program must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports, or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a Palmetto Fellows Scholarship institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person for the program. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the program.

62-375 Suspension or Termination of Institutional Participation

A. The Commission on Higher Education may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program statutes, guidelines, rules or regulations, the Commission on Higher Education may suspend, terminate, or place certain conditions upon the institution's continued participation in the program and require reimbursement to the Palmetto Fellows Scholarship Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any public or independent college or university, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

Fiscal Impact Statement:

Based on the implementation of the 2005 budget Proviso 5A.26 allowing the top 6% of the class to apply for the Palmetto Fellows Scholarship, approximately 100 additional students will be awarded if this regulation is implemented. There will be an increased cost to the State or its political subdivisions of approximately $670,000 per academic year for a period of four years.

Statement of Rationale:

These revisions are proposed to provide additional clarity to the existing regulation. The revisions are not significant changes and can be described as administrative refinement of existing policy. No new scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Commission's staff were relied upon in developing the regulation. The revisions are proposed based on staff judgment and to address questions from the regulated community regarding particular sections of the existing regulations.

Document No. 2949
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF DENTISTRY
CHAPTER 39
Statutory Authority: 1976 Code Sections 40-1-40, 40-15-40, and 40-15-140

Synopsis:

The Board of Dentistry is amending Regulation 39-4 regarding examination of applicants for licensure to delete the requirement that the National Board examination must have been passed within fifteen years so as to remove an impediment to the licensing of qualified dentists and dental hygienists.

Instructions:

Replace current Regulation 39-4, Examination of Dentists and Dental Hygienists, as printed below.

Text:

39-4. Examination of Dentists and Dental Hygienists.

All applicants for the general dentistry examination, and all applicants for the dental hygiene examination applying for licensure by examination in South Carolina must have passed the National Board (Joint Commission on National Dental Examinations).

Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivision.

Statement of Rationale:

There was no scientific or technical basis relied upon in the development of this regulation.

Document No. 2950
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF DENTISTRY
CHAPTER 39
Statutory Authority: 1976 Code Sections 40-1-40, 40-15-40, and 40-15-140

Synopsis:

The Board of Dentistry is adding Regulation 39-4.1 to establish procedures for re-examination of applicants for licensure who have failed the licensing examination.

Instructions:

Add Regulation 39-4.1(A) and 39-4.1(B) as printed below.

Text:

39-4.1 Re-examination

A. In case of failure at any examination, the applicant shall have the privilege of a second or third examination with the payment of the regular fee.

B. If the applicant has not met the Board's criteria for passing the examination after three takings, applicant shall not be permitted to retake the examination, and any score received after three takings shall not be considered, except by special permission of the Board. It shall be the responsibility of the applicant to petition the Board and to successfully complete at least one year of additional dental or dental hygiene education in an American Dental Association approved dental school or residency, as applicable, or explain in detail any special or compelling factors presented by the applicant to the Board the applicant wishes the Board to consider.

Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivision.

Statement of Rationale:

There was no scientific or technical basis relied upon in the development of this regulation.

Document No. 2961
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF DENTISTRY
CHAPTER 39
Statutory Authority: 1976 Code Sections 40-1-40 and 40-15-40.

R. 39-17. Guidelines for Sedation and General Anesthesia.

Synopsis:

The Board of Dentistry is amending Regulation 39-17 regarding guidelines for sedation and general anesthesia by updating the language and clarifying requirements.

Instructions:

Replace current regulation 39-17 (A through D) with the following regulation 39-17 (A through G)

Statement of Rationale:

There was no scientific or technical basis relied upon in the development of this regulation. The guidelines for sedation and general anesthesia are amended to conform to national guidelines in order ensure public safety.

Text:

39-17. Guidelines for Sedation and General Anesthesia

A. For purposes of these regulations, the administration of sedation and/or anesthesia by or under the direction of a licensed dentist in this state, except in the event that the sedation and/or anesthesia is administered by a licensed CRNA or anesthesiologist, shall be performed in accordance with applicable guidelines approved by the Board, including but not limited to, current American Dental Association (ADA) "Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists" and current American Academy of Pediatric Dentistry (AAPD) "Guidelines for the Elective Use of Pharmacologic Conscious Sedation and Deep Sedation in Pediatric Dental Patients."

B. A licensed dentist in this state shall be solely responsible for the administration and management of sedation and/or anesthesia in the practice of dentistry and must determine which of the guidelines, as referenced above, he or she shall operate under, and shall be responsible for complying with the same, as provided above.

C. In procedures utilizing a CRNA or an anesthesiologist, the administration of sedation and/or anesthesia shall be in accordance with South Carolina law.

D. Educational requirements may be waived by the Board for licensed dentists who have been utilizing conscious sedation for at least ten (10) years prior to the effective date of these regulations.

E. Dentists qualified to administer sedation and/or anesthesia under these regulations are subject to review and audit, and their facilities subject to on-site inspection by an official designee of the Board to determine compliance with these regulations.

F. Reporting of Adverse Occurrences – A licensed dentist must submit a written report within thirty (30) days to the Board regarding any known mortality or serious, unusual incident which occurs in a dental facility or during the twenty-four (24) hour period after the patient leaves the facility, if the incident produces significant temporary or permanent physical or mental injury of the patient as a direct result of the administration of the general anesthesia or sedation.

G. Nitrous Oxide/Oxygen. For purposes of these regulations, a licensed dentist in this state shall be solely responsible for the administration and management of nitrous oxide/oxygen in the practice of dentistry, and adequacy of the facility, including equipment with fail-safe features and a twenty-five (25%) percent minimum oxygen flow. Dental offices are subject to inspection and audit to determine compliance with these regulations.

Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivision.

Document No. 2957
DEPARTMENT OF MOTOR VEHICLES
Chapter 90
Statutory Authority: 1976 Code Section 56-10-640

Article 1: Motorist Insurance Identification Database

Synopsis:

Proposed regulation will replace and supersede Chapter 38, Article 3, Subarticle 15, Motorist Insurance Identification Database which was promulgated by the Department of Public Safety. Administration of this regulation has been transferred to the Department of Motor Vehicles. The proposed regulation will place the responsibility for administering the Motorist Insurance Identification Database program under the proper regulatory authority.

The proposed regulation will provide clarification of the frequency that certain transactions must be transmitted to the Department.

The proposed regulation will provide the ability of the Working Group to direct that enhancements be made to the SC ALIR system that would allow for the reporting of additional insurance or compliance transactions.

Instructions: Add text of new Regulations 90-001 through 90-012.

Text:

90-001. Introduction.

The South Carolina (SC) Department of Motor Vehicles (DMV) is implementing the South Carolina Automobile Liability Insurance Reporting (SC ALIR) System that collects automobile liability insurance information from insurers that are licensed to provide automobile liability insurance in the state. The DMV will cross-reference the collected information to South Carolina driver and vehicle data to identify registered vehicles that do not meet the minimum automotive liability insurance requirements of the state.

90-002. Definitions.

A. Cancellation or Refusal to Renew Date is the date provided in the notice required by Section 38-77-120.
B. Implementation Guide is the document developed by the Working Group to govern the policies and procedures required for the administration of the SC ALIR.
C. Newly Licensed Driver's List is the list defined in Section 56-10-640 and will be provided to insurers for a fee prescribed by the Department.
D. SR-22 is the notification filed with the department to show proof of future financial responsibility as required by section 56-9-550.
E. SR-26 is the notification filed with the department to show that an insurer has cancelled the financial responsibility coverage as required in 56-9-550.
F. Compliance Transaction is a transaction reporting insurance coverage subsequent to a DMV suspension notice.
G. Agency Reporting System is a system that allows insurance agencies to report compliance transactions using the SCALIR web interface.

90-003. Method of Communication Options for Insurers.

A. The SC ALIR System will provide insurers with the following options for data communications with the SC ALIR System for reporting cancellation and compliance transactions.

(1) Internet File Transfer Protocol (FTP) accepting both Electronic Data Interchange (EDI) and Text document.

(2) Value Added Network (VAN) accepting EDI documents.

(3) Internet Hyper-Text Transfer Protocol (HTTP) or Web accepting direct data entry.

(4) Other forms of communication approved by the Department in the Implementation Guide, upon recommendation of the Working Group.

B. During registration with the SC ALIR System, each insurer will select the communication. This selection applies to both sending data to the SC ALIR System and receiving data from the system. During registration, each insurer will also select the data document type to be exchanged with the system, based on the selected communication option.

C. Insurers will be responsible for the costs associated with programming their systems to utilize the options for data communications with the SC ALIR System.

90-003.1 File Transfer Protocol (FTP) Data Communication.

Insurers that wish to transmit large files to the SC ALIR System without incurring the costs of a VAN may use the FTP option. Secured FTP accounts and folders will be created within the SC ALIR System for the insurers that choose the FTP option while registering with the SC ALIR System. Login, folder structure and other necessary information will be provided to insurers to allow access their specific folders.

90-003.2. Value Added Network (VAN) Data Communication.

Insurers may select the VAN option. Insurers using the VAN option will have to set up mailboxes and communications. Insurers utilizing the VAN option will be required to pay an additional fee which will be placed by the Comptroller General into a special restricted account to be used by the Department to defray its expenses in administering this program.

90-003.3. Web Data Communication.

For low reporting volumes, insurers may prefer the option of entering data directly on the SC ALIR System's secure website. All registered users will have the ability to submit data over the web. However only users that have selected Web as the communication option will be able to retrieve Error Transactions via the web. After insurers have successfully registered, they will be provided with a unique user name and password to access the secure website. The confidentiality and continued security of the username and password will be the insurer's responsibility.

90-004. File Formatting Options.

Insurers submitting data using FTP will have the option of submitting either text or EDI files. Insurers using the VAN will only be able to submit EDI files. The file formatting option will be selected during registration.

90-004.1. Electronic Data Interchange Documents.

The SC ALIR System supports the American National Standards Institute, Accredited Standards Committee (ANSI ASC) X12 Standard, Transaction Sets 811 and 997, Release 3050. This standard has been identified for use in state government ALIR applications by insurance industry trade groups such as the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) and is already in use by some other state DMVs for Automobile Insurance Liability Reporting.

90-004.2. Text Documents.

Insurers will have the alternative of using Text data interchange with the SC ALIR System. A Text data interchange format will be specified to support the needs of the SC ALIR System.

90-005. Data Security.

A. FTP

The SC ALIR System will implement FTP using a Secured Sockets Layer (SSL) enabled FTP server and a PGP option will also be provided. An SSL enabled FTP client is required to exchange files with the server. The SC ALIR Program will supply an SSL enabled FTP client for the Microsoft Windows family of operating systems on request of any insurer.

B. Web

All data submitted/retrieved over the web will also be encrypted using SSL.

C. VAN

The Value Added Network is a private network that ensures data security.

90-006. Types of Transactions.

A. Insurers will report the following types of transactions:

(1) All mid-term non-pay cancellations.

(2) All mid term cancellations where an insured requests cancellation of the policy before the policy has expired.

(a) The following instances in this category DO NOT need to be reported:

(1) The insured produces satisfactory proof from the Department that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration;

(2) The insured has secured another policy that meets the financial responsibility requirements prescribed in the law;

(3) The insured has sold a vehicle previously covered and is switching coverage to a newly purchased vehicle (Drop/Add transaction)

(3) All non-renewals for underwriting reasons by the insurer.

(4) All FR4a compliance transactions for new/renewed policies that have been added/reinstated in response to FR-4 notices (Compliance Reporting).

B. The following transactions may be reported by insurers, but only over the web:

(1) Add SR 22 Filing

(2) SR 26 Policy Cancel

(3) Cancel Vehicle from SR 22 Filing

C. Only the following types of transactions may be reported by agencies:

(1) All FR4a compliance transactions for new/renewed policies that have been added/reinstated in response to FR-4 notices (Compliance Reporting).

90-007. Types of Policies.

A. Only private passenger automobile liability policies for vehicles registered and insured in South Carolina will be reported.

B. No commercial vehicle policies will be reported.

90-008. Data Elements.

The insurers will report the data elements defined in the Implementation Guide.

90-009. Implementation Guide.

The Implementation Guide will be revised as necessary, upon recommendation of the Working Group. Insurers will be provided with a minimum of ninety days notification of changes to the Implementation Guide.

90-010. Compliance Reporting.

Insurers or agencies must begin reporting compliance transactions electronically with the implementation of these regulations. Insurers have the option of reporting these transactions through the insurer's own system, or by allowing their agencies to report individual transactions using the SC-ALIR website.

90-010.1. Reporting Options for compliance reporting.

A. Insurers. If the insurer-level option is chosen, insurers have the option of using any SC-ALIR reporting methods to report these transactions (also referred to as FR4a transactions) on the insurer level. Reference the South Carolina Automobile Liability Insurance Reporting (SC ALIR) System Implementation Guide for Insurance Companies, (section dealing with compliance transactions).

B. Agencies. If agencies report compliance transactions on behalf of insurers, insurance agencies may report individual compliance transactions after registering on the SC-ALIR website. Complete registration details can be found in the South Carolina Automobile Liability Insurance Reporting (SC ALIR) System – Supplemental Information Guide for Agencies – Agency Reporting.

90-011. Frequency of Reporting.

A. Notices of Cancellation/Refusal to Renew (FR4). Insurers must submit cancellation transactions using the SC ALIR system on an as-needed basis, as frequently as required to ensure that DMV receives notice of cancellation immediately after the insurer determines the customer to be ineligible for reinstatement, according to the insurer's own business practices.

(1) If no cancellations are processed within a given reporting month, insurers must transmit a "no activity" report at least once within a 30-day period.

B. Compliance Transactions. In order to prevent unnecessary suspension actions from taking place, insurers or their agencies must submit compliance transactions on a daily basis, or as frequently as they occur, using the reporting options described in 90-010 above.

90-012. Other Types of Transactions.

The Working Group may direct that enhancements be made to the SC ALIR system that would allow insurers or agencies to report other types of insurance or compliance transactions. Details of these enhancements will be documented in Supplementary Implementation Guides that will be available to insurers and their agencies through posting on the SC ALIR website. The website address is www. sc-alir.com.

Insurers will be provided with a minimum of ninety days notification of changes to the Implementation Guide.

Fiscal Impact:

The Department of Motor Vehicles estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal.

Statement of Rationale:

The basis of the proposed regulation is to transfer authority for the implementation of the Motorist Insurance Identification Database Act of 2002 from the Department of Public Safety to the Department of Motor Vehicles.

All changes to the existing regulation text have been proposed based on the recommendation of the Working Group as provided for in R.38-269.

Resubmitted: March 2, 2005

Document No. 2901
DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114
Statutory Authority: 1976 Code Sections 43-1-80 and 20-7-2980, et seq.

114-500. Regulations For The Licensing of Child Care Centers

Synopsis:

The South Carolina Department of Social Services (SCDSS) is required to review child care regulations every three years. These proposed regulations replace the current regulations in their entirety. These regulations update current requirements in order to clarify current regulations, meet the United States Department of Health and Human Services (USDHHS) safety guidelines, as well as United States Department of Agriculture (USDA) food and snack regulations, and finally, raises the South Carolina regulations up to minimum child care standards already in place in neighboring states.

The areas in which theses regulations are amended include the following: (1) Increasing the number of staff to children in certain age ranges, and (2) updating health, sanitation, and safety requirements to ensure consistency with the South Carolina Department of Health and Environmental Control (SCDHEC) and/or USDA's requirements. The regulations also clarify existing definitions and add some new ones.

Instructions:

Replace current sections 114-500 through 114-504 with new sections 114-500 through 114-504. Add new sections 114-505 through 114-509.

Text:

114-500 GENERAL PROVISIONS

A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations.

B. Applicability

(1) These regulations apply to child care centers as defined in section 114-501.A. (9) relating to definitions for profit and private child care centers.

(2) These regulations apply equally to profit, not for profit and private child care centers.

(3) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools normally conducted during vacation periods;

(h) Facilities for the mentally retarded provided in Chapter 21, Title 44, Code of Laws of South Carolina;

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44, Code of Laws of South Carolina; and

(j) Child care centers owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for child care services; however, these facilities must comply with the provisions of Code of Laws of South Carolina; Sections 20-7-2900 through 20-7-2975 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Code of Laws of South Carolina; Sections 20-7-2700 through 20-7-2780 and Sections 20-7-2980 through 20-7-3090.

C. Access to and within the center, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

114-501 DEFINITIONS

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, representing a corporation, partnership, voluntary association, other public or private organization who has completed, signed and submitted a Department of Social Services application form and other requirements to the Department in order to obtain a child care center license or approval.

(2) Approval: A written notice issued by the Department to a department, agency or institution of the State, or a county, city or other political subdivision, not otherwise regularly licensed, approving the commencement of operations of a public child care center.

(3) Blood-borne pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(4) Center Director: The on-site staff person, who is responsible for the daily operation of a child care center, including but not limited to supervision of staff and children. The center director can only have responsibility for one center and may not hold another full-time job during the hours of center operation.

(5) Center Co-Director: The on-site staff person who is responsible for the daily operation of a child care center when the director is not present including, but not limited to, the supervision of staff and children.

(6) Center Director Designee: The on-site staff person who assumes the responsibilities of the Director for limited periods of time, when neither the Director nor Co-Director is on-site.

(7) Central Registry of Child Abuse and Neglect: An automated, computerized listing, maintained by the Department of Social Services containing the names(s), address(es), birth date(s), identifying characteristics and other information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(8) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care center; or up to 18 years of age if the child qualifies as special needs.

(9) Child care center: A center that is licensed for thirteen (13) or more children for care.

(10) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(11) Complete Application: An application is complete on the date of receipt of the last document required by the Department in order to issue a license/approval.

(12) Department: Refers to the Department of Social Services.

(13) Emergency Person: An individual 18 years of age or older, not regularly employed by the child care center who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(14) Infant: A child under 12 months of age.

(15) License: A written notice issued by the Department to a private facility approving the commencement of operations of a child care center.

(16) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(17) Owner: The owner may be independent of the staff of the child care facility and not be required to be on the premises. However, the owner can be the director or a teacher/caregiver. If the owner serves in the capacity of staff and directly supervises children, he/she shall have state and federal fingerprint reviews completed in accordance with Section 20-7-2700 et. Seq., Code of Laws of SC (1976), as amended, in addition to meeting all other requirements.

(18) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(19) Preschool Child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(20) Provisional approval: A written notice issued by the Department to a department, agency or institution of the State, or a county, city or other political subdivision approving the commencement of operations of a public child care center although the operator is temporarily unable to comply with all of the requirements for approval.

(21) Provisional license: A license issued by the Department to a director when the director is temporarily unable to comply with all the requirements for a license/approval.

(22) Regular approval: A written notice issued by the Department for a two-year period to a department, agency or institution of the State, or a county, city or other political subdivision, approving the operation of a public child care center in accordance with the provisions of the regulations of the Department.

(23) Regular license: A license issued by the Department for two years to a director showing that the licensee is in compliance with the regulations of the Department at the time of issuance and authorizing the licensee to operate in accordance with the regulations of the Department.

(24) Renewal: To grant an extension of a regular license.

(25) Revocation: To void the regular license of a child care center.

(26) School-aged Child: A child at least old enough to enroll in public kindergarten.

(27) Sex Offender Registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(28) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(29) Staff:Child Ratio: The maximum number of children permitted per teacher/caregiver.

(30) Student Teacher: An individual enrolled in his/her final practicum to be qualified for teacher certification. He or she shall meet the same health standards as other staff and undergo background investigation. He or she may be included in staff:child ratios.

(31) Student Volunteer: An individual at least 16 years of age from a recognized educational institution or who may receive credit, reimbursement for expenses or a stipend for providing services in a trainee capacity under supervision of a staff member at all times when providing direct care to children shall not be counted in the staff:child ratio.

(32) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements, and children's needs and accountability for their care. Adequate supervision also requires the director, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios, being in the room at all times or on the playground at all times when children are present.

(33) Teacher/Caregiver: Any person whose duties include direct care, supervision, and guidance of children in a child care center.

(34) Toddler: A child 12 months of age or older, but younger than 24 months of age.

(35) Training: Participation by child care center staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the child care center and in such subject areas related to: child care, child growth and development and/or early childhood education, nutrition, infection control/communicable disease management and causes, health and safety, signs and treatment of child abuse and/or neglect and shall include alternatives to corporal punishment. Training for directors may also be in areas related to supervision of child care staff or program administration.

(36) Two-year olds: A child 24 months of age or older but younger than 3 years of age.

(37) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

114-502 PROCEDURES

A. Licensing/approvals

(1) Any person, corporation, partnership, voluntary association, or other organization, whether private or public, may secure information about the licensing/approval process by contacting staff of the State or Regional Child Care Licensing Office.

(2) An application for a license/approval shall be completed on appropriate Department forms and shall be signed by the director. The Department representative shall provide the applicant with the required number of forms, a copy of current child care center regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), (Child Care Statute) and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the facility.

(3) After giving the applicant at least two working days notice, Department staff shall arrange a licensing/approval study during an on-site visit to the proposed facility for determining compliance with applicable regulations.

(4) Health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(5) The Department shall review the completed application form, completed licensing/approval inspection report, completed health and fire inspection reports, current child abuse and criminal history background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a license/approval and shall take one of the following actions:

(a) Issue a regular license/regular approval if all the provisions of the regulations and statute for the operation of a child care center have been met;

(b) Issue a provisional license/provisional approval with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or

(c) Deny the issuance of a license/approval if one or more violations seriously threaten the health, safety, or well being of the children.

(6) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional license/provisional approval.

(7) If a license/approval is issued, the Department staff shall mail the license/approval directly to the director.

(8) The license/approval shall state clearly the name of the director, the address and type of child care facility, the date on which the license/approval was issued and will expire, and the maximum number of children to be present in the center at any one time.

(9) Department staff shall notify the director as follows if a provisional license/provisional approval is issued or an application for a license/approval is denied:

(a) If a provisional license/provisional approval is issued, the Department shall notify the director in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the director to complete a written plan to correct each violation as approved by the Department;

(b) If a license/approval is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial.

(10) If a facility is found to be in operation after the Department has denied the application for the license/approval and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

B. Provisions of the license/approval

(1) A regular license/regular approval issued by the Department to the child care center shall be valid for two years from date of issuance, unless revoked by the Department or voluntarily surrendered by the director; provided however, that a change in location, ownership or sponsorship of the facility shall automatically void the license/approval.

(2) A provisional license/provisional approval issued by the Department to a child care center shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.

(3) A provisional license/provisional approval shall be amended from a provisional to a regular license/approval when all deficiencies have been verified as corrected.

(4) An application for a license/approval may be denied or the license/approval may be revoked by the Department if the owner, director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490 (B), S.C. Code of Laws, 1976 as amended.

C. Inspection and consultation

(1) Department staff may visit and inspect a child care center at anytime during the hours of operation without prior notice to verify regulatory compliance.

(2) Department staff shall provide at least two working days notice to the director or center director prior to conducting an initial or renewal inspection.

(3) The director and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.

(4) The Department has the right to interview staff and parents relating to regulatory compliance.

(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

(6) The director may request consultation from the Department. Department staff shall provide technical assistance to the director as requested.

D. Reasons for license/approval denial, revocation, or non-renewal

(1) A license/approval may be denied, revoked or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490(B), S.C. Code of Laws, 1976 as amended.

(2) A license/approval may be denied, revoked or not renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

E. Reporting of changes affecting license/approval

(1) The director shall immediately report to the Department when an occurrence takes place that may affect the status of the license/approval including the following:

(a) Change in director, ownership, or sponsorship;

(b) Change in center location; and

(c) Major renovations or alterations to the building.

F. License/approval renewal

(1) One hundred and twenty (120) days prior to the expiration date of the current license/approval, Department staff shall notify the director in writing of the time and requirements for renewal and shall request health and fire inspections.

(2) The same Department actions cited in 114-502.A.(2) through (10), above are applicable to the renewal process, except that the Department shall initiate the license/approval renewal process one hundred and twenty (120) days in advance.

114-503 MANAGEMENT, ADMINISTRATION, AND STAFFING

A. Display of license/approval

(1) The center shall display the current license/approval, as well as any violations in a prominent public place in the center. The back of the license/approval shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official license number issued by the Department shall be included.

B. Capacity

(1) No child care center shall have present at any one time children in excess of the number for which it is licensed/approved.

(2) Exception: In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily for a maximum of 90 days to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

C. Child abuse

(1) The center shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The director and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

(a) Participate in informational conferences with Child Protective and Preventive Services staff;

(b) Release records as appropriate, of children and staff upon request; and

(c) Allow access to the center premises for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

D. Reporting of incidents

(1) The center shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:

(a) Accidents or injuries involving any child occurring at the center requiring professional medical treatment, and

(b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its School Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

(a) A death of a child or staff person that occurs at the center;

(b) A child who is missing from the premises or who is left unattended in a vehicle operated by the child care center;

(c) Major structural damage to center;

(d) Natural or man-made disasters, including extreme weather conditions, which cause the center to be closed for more than one day of scheduled operation;

(e) An occurrence requiring the services of a fire or police department, which affects the health and safety of children;

(f) Charges or convictions of crimes against the owner, director, or any staff person;

(g) Reports of alleged child abuse involving the owner, director, or any staff person;

(h) A follow-up report shall be submitted to the Department as soon as an investigation of the facility is completed and corrective action is taken; and

(i) Parents should be notified if a legal or health issue occurs which impacts the health and safety of his/her child. This notification should occur at the time of pick-up or on the next day the child is in care.

E. Death of a child

(1) If the child dies while at the facility, the following shall be done:

(a) Immediately notify emergency medical personnel, the child's parents, and law enforcement;

(b) Immediately notify the licensing agency; and

(c) Provide information for children and parents as appropriate.

F. Parent access and communication

(1) The center shall permit the parent of a child in care free and full access to his or her child without prior notice, while their child is receiving care, unless there is a court order limiting parental access. This free access must not disrupt instructional activities and classroom routines.

(2) The center shall develop a policy for the release of children, which includes a security system to prevent the inappropriate release of a child to an unauthorized person. This policy shall be communicated with the parent upon admission.

(3) Parents shall be provided with the following information upon admission:

(a) The right of parents to free and full access to their child in accordance with 114-503.F.(1);

(b) The policy and procedures on release of children specified in 114-503.F.(2);

(c) The program activity schedule for their child's age group and child care area;

(d) The parent's responsibility to obtain necessary immunizations and physical examinations for their child;

(e) The policy and procedures for the administration of medications; and

(f) The policy and practices regarding the discipline and behavior management of children. This statement shall be re-signed if any discipline policy changes are made.

(4) Parents and staff shall sign and date an agreement, maintained on file and updated annually, that both parties have read and understand all policies relating to the operation of the facility.

G. Child records

(1) The facility shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner, but shall be immediately available to the Department, the child's teacher/caregiver, parent, or guardian upon request.

(3) Access to records is limited to the above unless requested by court order.

(4) Entries in a child's record shall be legible, dated and signed by the individual making the entry.

(5) A child's record shall be maintained on file at the child care center and made available to the Department upon request, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of both parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the center;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address, and telephone number of family physician or health resource;

(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the child care center;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the center during field trips and other away from the center activities;

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities; and

(j) A written statement, signed by the parents, acknowledging their understanding and acceptance of the disciplinary policies of the center.

(6) A health record shall be maintained in the center for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the child care center on the appropriate DSS form;

(b) A current South Carolina certificate of Immunization; and

(c) Other health information if deemed necessary by the director of the center and/or by parent(s)/guardian(s).

(7) Emergency information for each child shall be easily and immediately accessible while at the center, during transportation, and during any trips away from the premises, and it shall include the following:

(a) The full name of both parents/guardian, and updated address, work, home and mobile numbers where they can be reached during the time the child is in the center;

(b) The name, address, telephone number and relationship of at least two individuals designated by the parents/guardian to be contacted in an emergency and who have the authority to obtain emergency medical treatment for the child;

(c) The name, address and telephone number of the child's physician, and the emergency care, medical and dental care provider; and

(d) Health insurance information.

(8) Emergency information shall be updated by the parent as changes occur.

H. Staff records shall include the following:

(1) Names, positions and hours of duty of staff members;

(2) Written policies that refer to or apply to DSS licensing regulations;

(3) Three letters of reference for the center director;

(4) Criminal history background records check forms for the director, staff, emergency person(s), and volunteer(s);

(5) Record of training for director and staff; and

(6) Written statements signed by all staff members regarding disciplinary policies of the center.

(7) The director shall maintain health records in the center for himself/herself, staff, and emergency person(s) in accordance with 114-505.G.(1)(a) through (c).

I. Confidentiality and applicable laws and regulations

(1) The center shall have written policy to safeguard the confidentiality of all records.

(2) A child's record, emergency information, photograph and other information about the child or family and information that may identify a child by name or address is confidential and may not be copied, posted on a web site or disclosed to unauthorized persons, without written consent from the child's parent.

(3) The center shall comply with all applicable federal, state, and local laws, regulations, and ordinances.

(4) The center shall make available at least one copy of Section 20-7-2700 et seq., Code of Laws of South Carolina, a copy of sections of the Children's Code related to child abuse and neglect and a copy of the current regulations for child care centers that will be provided by the Department.

J. Communication

(1) The center shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

(3) The center shall have an internal means of communication among staff.

K. Staffing

(1) Child abuse checks

(a) The director or staff shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16-17-490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the director(s) on each staff person, except for volunteers in accordance with the following time lines:

(i) For the director(s) and at least two staff persons prior to the initial issuance of a regular or provisional license/approval.

(ii) For the director(s) and staff prior to employment.

(iii) For all other staff persons (including the emergency person) prior to employment.

(iv) For all persons hired by the child care facility at each license/approval renewal.

(c) No child care center shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

(2) Background criminal history checks

(a) To be employed by or to provide teacher/caregiver services at a child care facility, a person shall first undergo a State fingerprint review from the State Law Enforcement Division (SLED).

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No child care facility may employ a person, engage the services of or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to SC Code of Laws Section 23-3-430 or who has been convicted of:

(i) A crime listed in Code of Laws of South Carolina; Chapter 3 of Title 16, Offenses Against the Person;

(ii) A crime listed in Code of Laws of South Carolina; Chapter 15 of Title 16, Offenses Against Morality and Decency;

(iii) The crime of contributing to the delinquency of a minor, contained in Code of Laws of South Carolina; Section 16-17-490.

(d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility; however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.

(e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.

(3) Center Director and/or Center Co-Director(s)

(a) There shall be a center director and/or center co-director(s) responsible for the following:

(i) Administration and management of the center;

(ii) Safety and protection of the children;

(iii) Development and implementation of policies and procedures;

(iv) Communication with parents about the policies and procedures of the center;

(v) Staff hiring, supervision and ongoing professional development; and

(vi) Compliance with all applicable laws and regulations of the child care center.

(b) The center director(s) or a designee shall be physically present on-site during the hours of the center's operation. A center co-director is required when the program operates more than 12 hours per day.

(c) The center director and center co-director(s) shall be at least 21 years of age and meet one of the following qualifications:

(i) A bachelor's degree or advanced degree from a state-approved college or university in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;

(ii) A bachelor's degree from a state-approved college or university in any subject area, six months experience working with children in a licensed, approved or registered child care facility;

(iii) An associate's degree from a state-approved college or university in early childhood education, child development, child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;

(iv) A diploma in child development/early childhood education from a state-approved institution or a child development associate credential (CDA), and one year work experience in a licensed, approved or registered child care facility; or

(v) A High School Diploma or GED with 3 years experience in a licensed, approved or registered child care facility. One year shall include supervision of child care staff.

(4) Caregivers/Teachers

(a) Caregivers/Teachers shall meet the following qualifications:

(i) Be at least 18 years of age, and able to read and write;

(ii) A teacher/caregiver who began employment in a licensed or approved child care center in South Carolina after June 30, 1994, must have at least a high school diploma or General Educational Development Certificate (GED) and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. However, a teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed or approved child care facility. Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed or approved child care facility.

(iii) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed or approved facility and was employed as of July 1, 1994, in a licensed or approved child care center in South Carolina is exempt from the high school diploma, General Education Development (GED), and Certificate of Completion requirements of (ii) above; and

(iv) A teacher/caregiver with an undergraduate degree from a state approved college or university in early childhood, child development, or a related field may begin working with the children immediately without additional supervision.

(b) Exception: A teacher/caregiver may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

(5) Professional development

(a) The director(s) shall provide orientation for all new staff, volunteer(s), and emergency person(s) prior to their employment, volunteering, and student/teacher training. This orientation shall include the following:

(i) Specific job duties and responsibilities;

(ii) The requirements of this chapter related to their job; and

(iii) The policies and procedures of the center that affect the health and safety of children.

(b) The director shall participate in at least twenty clock hours of training annually. At least five clock hours shall be related to program administration and at least five clock hours shall be in child growth and development, early childhood education and/or health and safety excluding first aid and CPR training. The remaining hours shall come from the following areas: Curriculum Activities, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(c) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least fifteen clock hours annually. At least five clock hours shall be in child growth and development and at least five clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours shall come from the following areas: Guidance, Health, Safety, Nutrition, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(d) When children with special needs are enrolled, the director and staff members shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(e) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(f) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(g) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the center at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

114-504 SUPERVISION

A. Children shall be directly supervised at all times by qualified staff persons:

(1) Directly supervised for infants and toddlers means staff persons shall be in the same room or area as the children and that the children shall be within their sight at all times;

(2) Directly supervised for preschool and school-age children means staff persons are physically near, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed;

(3) The center shall have a written procedure to account for the presence of each child as the child enters and exits the premise, enters and exits a vehicle or moves to a new location in or around the center;

(4) There shall be at least two staff persons in the center at all times; and

(5) Children in feeding chairs shall be constantly supervised.

B. Ratios

(1) The following staffing ratios apply at all times children are present on the premises and during activities away from the center and shall be prominently posted in all classrooms.

STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:9	1:8	1:7
Three to four years	1:13	1:12	1:11
Four to five years	1:18	1:17	1:16
Five to six years	1:21	1:20	1:19
Six to twelve years	1:23	1:23	1:23

(2) When there are mixed age groups in the same room, the staff:child ratio shall be consistent with the age of the majority of the children when no infants or toddlers are in the mixed age group. When infants or toddlers are in the mixed age group, the staff:child ratio for infants and toddlers shall be maintained.

(3) For mixed age groups, with one or more infants or toddlers, the ratios applicable to the youngest child in the group apply.

C. Nap time staff:child ratios

(1) During nap times the following ratios apply as long as at least one other staff person is readily available:

NAP TIME STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:18	1:16	1:14

Three to four years	1:26	1:24	1:22
Four years and older	1:36	1:34	1:32

D. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming or wading. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

WATER SAFETY STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four to five years	1:6
Five years and older	2:25

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

114-505 HEALTH, SANITATION AND SAFETY

A. Child health

(1) There shall be a statement from a parent/guardian attesting to the health status of the child within 30 days prior to admission and utilizing the appropriate DSS Form.

(2) Children shall be excluded from child care when they exhibit the conditions listed in the South Carolina Department of Health and Environmental Control Exclusion Policy, State Law 1976, Code Section 44-1-110, 44-1-140, and 44-29-10.

(3) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the center. Consumption of alcoholic beverages or use of other non–prescription narcotic or illegal substances is prohibited on the center premises. People who appear to be under the influence of alcohol or other drugs shall not be in the center when children are present.

B. Sanitation

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the center, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

C. Emergency medical plan

(1) The center shall have an emergency medical plan to address the following:

(a) Medical conditions under which emergency care and treatment is warranted;

(b) Steps to be followed in a medical emergency;

(c) The hospital or source of health care to be used;

(d) The method of transportation to be used; and

(e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

D. Medications or medical procedures

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures:

(a) All medications shall be used only for the child for whom the medication is labeled;

(b) Medications shall not be given in excess of the recommended dose; and

(c) Prescribed special medical procedures ordered for a specific child shall be written, signed, and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications:

(a) All medications shall be kept in their original labeled containers and have child protective caps. The child's first and last name shall be on all medications;

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture; and

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log:

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication and a copy provided to the child's parent(s)/guardian(s).

(4) Medication errors:

(a) Medication errors, e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication; shall be recorded in the child's record; and

(b) The parent shall be immediately notified and notified in writing of a medication error or a suspected adverse reaction to a medication.

E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

F. Diapering

(1) Each room in which children who wear diapers are cared for shall have its own diaper-changing area adjacent to the hand-washing sink.

(2) Facilities caring for infants shall provide a diaper changing area located within clear view.

(3) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(4) Diapering surfaces shall be sanitizable.

(5) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(6) Diapering surfaces shall be cleaned and sanitized after each use by washing to remove visible soil followed by wiping with an approved sanitizing solution (e.g. 1 tablespoon of chlorine bleach per 1 quart of water) and/or disposable, non absorbent paper sheets approved for this purpose and shall be discarded immediately after each diapering.

(7) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with a solution of chlorine bleach and water.

(8) Diapering shall occur only at a diapering changing area or in a bathroom.

(9) Diaper changing areas shall not be used for any purpose other than for diapering.

(10) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(11) Each waste and diaper container shall be labeled and clean and free of build-up of soil and odor. Wastewater from such cleaning operations shall be disposed of as sewage.

(12) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within reach of diaper changing area separate from other trash. Soiled non-disposable items shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(13) Disposable non-absorbent paper sheets shall be disposed of immediately after diapering is completed.

(14) Soiled disposable diapers shall be disposed outside the building daily. Soiled non-disposable diapers shall be kept in a sealed plastic bag and returned to the parent daily.

(15) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(16) No child shall be left unattended while being diapered.

G. Staff health

(1) The director shall maintain the following records in the center for herself/himself, staff, and emergency person(s):

(a) Medical statements required by the Department and completed by the staff person verifying that his/her health is satisfactory. Medical statements shall be updated as necessary;

(b) A health assessment from a health care provider assessing the ability of the staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the director and staff at least every four years after the initial assessment; and

(c) Written evidence from a physician or health resource attesting that each staff person is free from communicable tuberculosis at the time of employment and subsequently according to state statute.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a child care center in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the director, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the child care center until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the center, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the SC Department of Health and Environmental Control Exclusion Policy, pursuant to Section 44-1-110, 44-1-140, and 44-29-10 of the South Carolina Code Ann (2002).

H. Fire safety and emergency preparedness

(1) Private and public child care centers shall comply with the regulations and codes of the State Fire Marshal.

(2) In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

(3) The facility shall have an up to date written plan for evacuating in case of fire, a natural disaster, or other threatening situation that may pose a health or safety hazard. The facility shall also include procedures for staff training in this emergency plan.

I. Transportation

(1) If the center provides or arranges for transportation through contract, the following transportation requirements apply:

(a) The staffing ratios specified in 114-504.B.(1) through (3) apply. The driver of the vehicle shall not be counted in the ratios for infants or toddlers.

(b) Each child shall be secured in an individual, age-appropriate safety restraint at all times the vehicle is in motion.

(c) Safety restraints shall be used in accordance with the manufacturer's instructions.

(d) A child shall not be left unattended in a vehicle.

(e) Transportation placement of children in the vehicle shall be in accordance with all applicable state and federal laws.

(f) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725 (A) (4) of the Code of Laws of 1976.

(g) There shall be a first aid kit and emergency information on each child in the vehicle.

(h) Use of tobacco products is prohibited in the vehicle.

(i) Written consent from the parent is required prior to transportation.

(j) When the facility provides transportation to and from the child's home, the facility staff shall be responsible for picking the child up and returning the child to a designated location.

(k) The director and/or staff of the center shall provide the driver of the vehicle with a record that lists the name, address, and telephone number of the center, as well as names of children being transported.

(2) The following requirements apply for safe pick-up and drop-off:

(a) The center shall have safe crossways and pick-up and drop-off locations and communicate these locations to the parents.

(b) Children shall be directly supervised during boarding and exiting vehicles.

(c) The director and/or staff shall have on file, in the facility, written permission from parent(s)/guardian(s) for transporting children to and from the home, school, or other designated places, including center-planned field trips and activities.

(d) Written transportation plans for routine travel shall be on file. Plans shall include a checklist to account for the loading and unloading of children at every location.

114-506 PROGRAM

A. Program of activities

(1) There shall be a written, planned, daily program of activities for all children.

(2) Activities shall be developmentally appropriate.

(3) Staff shall plan and provide daily age-appropriate activities in accordance with the child's developmental level, such as stories, music, art, cooking, living skills, puzzles, blocks, etc.

(4) Children shall be provided daily indoor opportunities for freedom of movement.

(5) Quiet areas with supervision shall be made available to children desiring to be alone or to work on homework.

(6) Staff persons shall provide the opportunity for the children to ask questions and engage in conversations with others. Staff shall have frequent positive verbal communications with the children.

(7) Age appropriate radio and television, VCR tapes, DVDs and other media shall be previewed by the director and staff and used only as a supplement and enhancement to the daily program. No child shall be required to view these media programs.

(8) All children shall be given the opportunity for outdoor play, weather permitting.

(9) Napping expectations and time periods shall be developmentally appropriate and meet the needs of the individual child.

B. Discipline and behavior management

(1) The facility's discipline policy shall outline methods of guidance appropriate to the ages of the children. Positive, non-violent, non-abusive methods for managing behavior shall be implemented.

(2) All teacher/caregivers shall sign a facility agreement to implement the discipline and behavior management policy, with a statement that specifies no corporal punishment shall be used except when authorized in writing by the parent(s)/guardian(s); corporal punishment shall not exceed guidelines established in Section 20-7-490(c)(1)(a) through (e) of the Code of Laws of South Carolina, 1976 amended.

(3) Emotional abuse is also prohibited, including but not limited to: profane, harsh, demeaning or humiliating language in the presence of children. Threatening, humiliating, ignoring, corrupting, terrorizing, or rejecting a child is prohibited.

(4) Withholding, forcing, or threatening to withhold or force food, sleep or toileting is prohibited.

(5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.

(6) The use of children to discipline other children is prohibited.

(7) Children shall not be restrained through drugs or mechanical restraints.

(8) Each child care center has the option to prohibit corporal punishment.

114-507 PHYSICAL SITE

A. Indoor space and conditions

(1) The director shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Department staff shall determine the total number of children to be cared for in each room by measuring and computing the rooms separately. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms, and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

(2) Ventilation

(a) Child care areas, dining areas, kitchens, and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.

(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(d) Windows accessible to children under 5 years of age that are above ground level of the building shall be adjusted to limit the opening to less than 6 inches or protected with guards that do not block outdoor light.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the facility.

(4) Lighting

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

(5) Environmental hazards

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens, and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, child care centers shall meet applicable lead base paint requirements, as established by the South Carolina Department of Health and Environmental Control (DHEC), pursuant to South Carolina Code annotated Section 44-53-1310, et seq., and Regulation Number (61-85).

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment, and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers, mops or similar wet floor cleaning tools, and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident or cause harm to the health and safety of the children.

(g) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, and drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding, and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

(6) Water Supply

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with DHEC.

(b) The center shall have hot and cold water under pressure. (Forty PSI recommended) If an individual private well water supply is used, the director shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) Hot water shall be between 100 to 120 degrees Fahrenheit.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

(7) Temperature

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the center.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

(8) Sanitation

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

(9) Doors

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails, and railings

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the center.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources

(a) The center shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector. – NFPA 70 and 99 Compliance.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools, unless ground fault devices are utilized.

(12) Bathrooms

(a) There shall be at least one flush toilet for every 20 children over two years of age. Staff shall be included when determining availability of toilets if there are no staff rest rooms.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure for every 20 children over two years of age. Sinks shall be located in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Privacy shall be provided for toilets used by preschool and school age children.

(g) Floor and wall surfaces in the toilet area shall have smooth, washable surfaces. Carpeting is not permitted in the toilet area.

(h) Toilets, toilet seat adapters, sinks and restrooms shall be cleaned at least daily and shall be in good repair.

(i) Liquid or granular soap and disposable towels shall be provided at each sink.

(j) Children shall not be left unattended in a bathtub or shower.

(k) Easily cleanable receptacles shall be provided for waste material. Toilet rooms used by women shall be provided with at least one covered waste receptacle.

(l) Bathroom facilities shall be completely enclosed.

B. Outdoor space

(1) The director shall provide at least seventy-five (75) square feet of outdoor play space per child. Where outdoor space is insufficient at the center, the director and/or staff may take the children outdoors in shifts or utilize parks or other outdoor play areas which meet safety requirements and which are easily accessible.

(2) The outdoor space shall be free from hazards and litter.

(3) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(4) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

C. Furniture, toys, and recreational equipment shall:

(1) Be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment;

(2) Meet the standards of the US Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children;

(3) Be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time;

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used they shall have waterproof, washable, comfortable pads;

(5) All arts and crafts and play materials shall be nontoxic;

(6) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy;

(7) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment;

(8) Swings shall be located to minimize accidents and shall have soft and flexible seats;

(9) Cushioning material shall extend at least six (6) feet beyond the equipment and swings;

(10) Slides shall have secure guards along both sides of the ladder and placed in a shaded area;

(11) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun;

(12) Outdoor equipment shall be arranged so that children can be seen at all times;

(13) The height of play equipment shall be developmentally and size appropriate;

(14) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage;

(15) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points; and

(16) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and Materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

D. Rest equipment

(1) Cribs shall meet the requirements of the US Consumer Products Safety Commission (CPSC).

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler and preschool child, labeled with the child's name and used only by that child.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

E. Environmental hazards

(1) Poisons or harmful agents

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be of a type applied by a licensed exterminator in a manner approved by the United States Environmental Protection Agency. Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards

(a) Swimming pools located at the center or used by the center shall conform to the regulations of DHEC for construction, use, and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices.

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are not permitted in the center or on the premises without the express permission of the authorities in charge of the premises or property. This does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned, properly housed, fed and cared for and have had required vaccinations, as appropriate. Live animals shall be excluded from areas where food for human consumption is stored, prepared or served.

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal.

(c) Animal litter and waste shall not be accessible to children.

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

114-508 MEAL REQUIREMENTS; FOOD PREPARATION AND SERVING; STORAGE AND PROTECTION OF FOOD SUPPLIES, UTENSILS AND EQUIPMENT

A. Meal requirements

(1) If food is provided by the facility, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view.

(b) Meals and snacks provided shall be in compliance with the USDA Child Care Food Program Guidelines. Centers that do not provide overnight care shall serve at least one meal and at least one snack that meet USDA Child Care Food Program Guidelines. Centers providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines.

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider.

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider.

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in child care centers shall be from a source approved by the health authority and shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) The use of food in hermetically sealed containers that was not prepared in an approved food-processing establishment is prohibited.

(6) The use of home-canned foods is not allowed.

(7) The following requirements shall be met when it is necessary to provide meals through a catering service:

(a) Catered meals shall be obtained from a food service establishment approved by the DHEC.

(b) If adequate cleaning and sanitizing equipment is not available, only disposable eating and drinking utensils shall be used to serve catered meals or food; and

(c) The procedures and equipment used to transport catered meals shall be approved by the DHEC.

(8) Meals and snacks may be provided by the center or the parent. The center shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(9) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(10) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

B. Food preparation

(1) Adequate hand-washing facilities, separate from food preparation sinks, equipped with hot and cold water under pressure supplied through a mixing faucet, shall be provided in the food preparation area. Hot water shall be at least 125 degrees Fahrenheit. (Facilities shall not be required to install an additional hand-washing sink in the food preparation area if, in the opinion of the health authority, the existing hand-washing facilities are adequate.)

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water in an approved hand-washing sink before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean. The director shall ensure proper hair restraints are worn to protect from falling hair.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation. Staff shall use tobacco only in approved, designated areas.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit.

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(8) Use of "common drinking cups" is prohibited.

(9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.

(10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

D. Storage

(1) All food shall be properly labeled and stored, and shall be protected against contamination.

(2) The director shall provide refrigeration units and insulated facilities, as needed, to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 degrees Fahrenheit or above, except during necessary periods of preparation.

(3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.

(4) Containers of food, food preparation equipment and single service articles shall be stored at least 6” above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.

(5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.

(6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.

(7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.

(8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.

E. Cleaning, storage, and handling of utensils and equipment

(1) Tableware shall be washed, rinsed, and sanitized after each use.

(2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized.

(3) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.

(4) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.

(5) After sanitation, all equipment and utensils shall be air-dried.

(6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.

(7) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept reasonably clean, be rinsed thoroughly of such solution, sanitized by one of the following methods:

(a) Complete immersion for at least 30 seconds in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit;

(b) Complete immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million of available iodine and having a pH no higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit;

(c) Complete immersion for at least 30 seconds in a clean solution containing at least 200 parts per million of quaternary ammonium at a temperature of at least 75 degrees Fahrenheit; or

(d) Complete immersion in hot water at a temperature of 170 degrees Fahrenheit in a three-compartment sink.

(8) Other chemical sanitizing agents may be used which have been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which suitable field tests are available. Such sanitizing agents, in use solution, shall provide the equivalent bactericidal effect for a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75 degrees Fahrenheit.

(9) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(10) All dishwashing machines shall be approved by the South Carolina Department of Health and Environmental Control (DHEC) and shall meet applicable installation requirements.

(11) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.

(12) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.

(13) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

(14) Dish tables or drain boards of adequate size to properly handle soiled utensils prior to washing and for cleaned utensils following rinsing and sanitizing shall be provided.

114-509 INFANT AND TODDLER CARE, CARE FOR MILDLY ILL CHILDREN, AND NIGHT CARE

A. Infant and toddler care

(1) Stimulation and nurturing

(a) Children shall not remain in their cribs or play equipment for other than sleeping and specific, short time-limited quiet play.

(b) Infants and toddlers shall be routinely held, talked to, rocked, caressed, carried, nurtured, read to, sung to and played with throughout the day.

(c) There shall be toys and materials that encourage and stimulate children through seeing, feeling, hearing, smelling and tasting.

(2) Programs for infants and toddlers

(a) Staff shall provide appropriate attention to the needs of children.

(b) The daily program for infants and toddlers shall include goals for children, which promote healthy child development and allow for individual choice and exploration.

(c) Information about the child's daily needs and activities shall be shared with parents.

(3) Feeding, eating and drinking

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice, or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one-half inch or less.

(4) Feeding chairs

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a T-shaped safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

(5) Sleeping

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Cribs shall be spaced so that there is at least three feet of space on two sides of the crib. Cribs shall not be placed next to each other so that one child may reach into the other child's crib.

(d) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

(6) Equipment and materials

(a) The infant and toddler room shall have chairs for staff persons to sit while holding and feeding children.

(b) Indoor space shall be protected from general walkways where crawling children may be on the floor.

(c) Mobile walkers are not permitted.

B. Care for mildly ill children

(1) Parent notification and instructions

(a) If a child becomes ill while in care, the center shall notify the parent or responsible party immediately.

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the center shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician.

(c) If a center chooses to provide care to a mildly ill child, the center shall receive instructions from the parent for any special care needs of the child.

(2) Policies and procedures

(a) If a center chooses to provide care to a mildly ill child, the center shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the South Carolina Department of Health and Environmental Control Exclusion Policy, State Law 1976, Code Section 44-1-110, 44-1-140, and 44-29-10.

(c) If a child is in a rest area due to illness, the child shall be directly supervised at all times.

(d) A hand-washing sink shall be in close proximity to the area designated for mildly ill children.

C. Night care

(1) Requirements for staffing ratios:

(a) Staff counted in the staffing ratios shall be awake, alert and attentive to the children at all times.

(b) The supervision and ratio requirements for sleeping hours are the same as specified for napping in 114-504.C.

(2) An unannounced emergency drill shall be held during sleeping hours at least every 60 days.

(3) Sleeping equipment

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the center.

(b) Cots and portable beds are not permitted.

(4) Bedtime

(a) Children shall be provided the opportunity to read or be read to before bedtime.

(b) There shall be books, games, and other quiet time activities for the child prior to bedtime.

(c) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

(5) Bathing

(a) If children bathe at the center, there shall be one bathtub or shower with a slip resistant surface for every ten children.

(b) Each child shall have his or her own clean towel and washcloth.

(6) Night clothes

(a) The center shall make arrangements with the parent to provide clean, appropriate night clothes.

Fiscal Impact Statement:

The Department of Social Services estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal. The cost to child care providers to comply with the proposed regulations is not able to be determined because that type of data is not currently kept at the agency. Although providers will incur some costs, it is hoped that those costs can be minimized and grants to assist providers in meeting the new requirements may be available.

Statement of Rationale:

The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations. Child care licensing standards provide the foundation for ensuring safety and quality for children. In addition to ratio revisions, these proposed regulations improve readability and strengthen and clarify basic health and safety standards.

The improved readability and clarified basic health and safety standards will enable parents to be better-informed consumers of child care. Staff:child ratios and well-trained consistent caregivers are critical factors in child care. States with higher quality standards in their regulations report better outcomes for children. High staff:child ratios improve quality for all children, but are most important for infants and toddlers.

The proposed regulations set new staff:child ratios.

When programs lower the number of children each adult cares for:

- Providers have more time for each child;
- Children can be more closely supervised, reducing danger to health and safety; and
- Children can be cared for and nurtured in a manner more similar to a homelike environment.

Positive outcomes for children will include:

- Increased interaction among adults and children;
- Enhanced language, social, and intellectual development;
- Less aggression and more cooperation among children;
- More likely to be better prepared to learn and more successful in school
- Growing into productive citizens;
- Improving their academic performance;
- Increasing earning ability; and
- Decreasing potential for criminal activity.

The agency will implement the regulations with existing staff and resources, which have been maximized as a result of the transfer of the CCDF-financed ABC Child Care Program to DSS. Quality early childhood experiences have an economic and social benefit to the State:

- SC employers have reported that employees who have safe, dependable, high quality environments for their children while they work, demonstrate increased productivity and decreased absenteeism.

- Children in high quality child care are more likely to be ready to learn and successful in school and grow into contributing members of society rather than members of the welfare or corrections systems.

The positive implications of quality early childhood education and child care for juvenile justice, schools, and the work force are emphasized by the National Conference of State Legislatures (NCSL) in Early Childhood Care and Education: An Investment That Works (1997).

Lawrence J. Schweinhart of the High/Scope Perry Educational Research Foundation states: "…a high-quality program for young children living in poverty, over their lifetimes, improves their educational performance, contributes to their economic development, helps prevent them from committing crimes, and provides a high return on taxpayer investment."

Changes in ratios are minimal and implementation will be over a 4-year period. Changes in ratios only result in decreasing the number of infants and 2-3 year olds per caregiver by one child 2 years after the regulations become effective. At the end of 4 years, infants and 1-2 year old ratios are unchanged, 2-3 year olds will have decreased by 3 children per caregiver, and 3-12 year olds decrease by 2 children per caregiver.

Experiences reported from other states have shown that higher staff:child ratios have not adversely affected the market.

- When Arizona changed ratios from 1:8 to 1:5 for infants and from 1:40 to 1:15 for 4 year olds, the number of centers increased from 777 to 1,081.
- Ohio experienced an increase of 35-50% in the number of slots when infant ratios changed from 1:8 to 1:5.

In Florida reduced ratios…"Did not have a marked negative impact on the child care marketplace nor did . . . [they] significantly affect consumer costs."

Although providers may incur some costs, it is hoped that those costs can be minimized and that grants to assist providers in meeting the new requirements may continue to be available.

SC and GA currently allow more children per staff member for children 0-18 months than any of the other Southeastern states. SC's proposed ratios will result in the following comparisons to other Southeastern states:

- For children 0-12 months old, SC will equal KY, MS, and NC but will still lag behind TN, AL, and FL
- For children ages 2–3 years old, SC will move to comparable ratios with TN and AL, leaders in the region.
- For 3-year-old children, SC will be behind TN and AL but ahead of KY, MS, GA, NC, and FL.
- For 4-year-old children, SC will be comparable to AL and MS.
- For 5-year-old children, SC will lag behind KY, TN, and AL but will be slightly better than GA and MS and ahead of NC and FL.
- No changes are proposed for SC ratios for children 6 years and up. SC ratios lag behind KY but are better than GA, NC, and FL for 6 year olds.

Ratios in Neighboring States

Ages	South Carolina		Georgia	North Carolina	Tennessee
	Current	Proposed*			
6 weeks	1:6	1:5	1:6	1:5	1:4
9 months	1:6	1:5	1:6	1:5	1:4
18 months	1:6	1:6	1:8	1:6	1:6
27 months	1:10	1:7	1:10	1:10	1:7
3 years	1:13	1:11	1:15	1:15	1:9
4 years	1:18	1:16	1:18	1:20	1:15
5 years	1:21	1:19	1:20	1:25	1:20

*These proposed ratios would become effective in 2008.

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Document No. 2924
DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114
Statutory Authority: 1976 Code Sections 43-1-80 and 20-7-2980 et seq.

114-520. Regulations For The Registration Of Child Care Centers Operated By Churches Or Religious Entities

Synopsis:

The South Carolina Department of Social Services (SCDSS) is required to review child care regulations every three years. These proposed regulations replace the current regulations in their entirety. These regulations update current requirements in order to clarify current regulations, meet the United States Department of Health and Human Services (USDHHS) safety guidelines, as well as United States Department of Agriculture (USDA) food and snack regulations, and finally, raises the South Carolina regulations up to minimum child

care standards already in place in neighboring states.

The areas in which theses regulations are amended include the following: (1) Increasing the number of staff to children in certain age ranges, and (2) updating health, sanitation, and safety requirements to ensure consistency with the South Carolina Department of Health and Environmental Control (SCDHEC) and/or USDA's requirements. The regulations also clarify existing definitions and add some new ones.

Instructions:

Replace current sections 114-520 through 114-521 with new sections 114-520 through 114-521. Add new sections 114-522 through 114-529. The Department requests that section 114-526 be reserved for future use in order to keep section numbers consistent with other types of child care regulations.

Text:

114-520. GENERAL PROVISIONS.

A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations.

B. Applicability

(1) These regulations apply to child care centers operated by churches or religious entities as defined in section 114-521A(8).

(2) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools conducted during school vacation periods;

(h) Facilities for the mentally retarded provided in Chapter 21, Title 44; and

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44.

C. Access to and within the center, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

114-521. DEFINITIONS.

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, representing a corporation, partnership, voluntary association, other public or private organization who has completed, signed and submitted a Department of Social Services (DSS) application form and other requirements to the Department in order to obtain a child care center registration.

(2) Blood-borne pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(3) Center director: The on-site staff person, who is responsible for the daily operation of a child care center, including but not limited to supervision of staff and children. The center director can only have responsibility for one center and may not hold another full-time job during the hours of center operation.

(4) Center co-director: The on-site staff person who is responsible for the daily operation of a child care center when the director is not present including, but not limited to, the supervision of staff and children.

(5) Center director designee: The on-site staff person who assumes the responsibilities of the Director for limited periods of time, when neither the Director nor Co-Director is on-site.

(6) Central registry of child abuse and neglect: An automated, computerized listing, maintained by the DSS containing the names(s), address(es), birth date(s), identifying characteristics and other information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(7) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care center; or up to 18 years of age if the child qualifies as special needs.

(8) Child care center: A center that is registered for thirteen (13) or more children for care.

(9) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(10) Complete application: An application is complete on the date of receipt of the last document required by the Department in order to issue a registration.

(11) Department: Refers to the Department of Social Services.

(12) Emergency person: An individual 18 years of age or older, not regularly employed by the child care center who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(13) Infant: A child under 12 months of age.

(14) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(15) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(16) Preschool child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(17) Provisional registration: A registration issued by the Department to a director when the director is temporarily unable to comply with all the requirements for a registration.

(18) Regular registration: A registration issued by the Department for two years to a director showing that the registrar is in compliance with the regulations of the Department at the time of issuance and authorizing the religious entity to operate in accordance with the regulations of the Department.

(19) Renewal: To grant an extension of a regular registration.

(20) School-aged child: A child at least old enough to enroll in public kindergarten.

(21) Sex offender registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(22) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(23) Staff:child ratio: The maximum number of children permitted per teacher/caregiver.

(24) Student teacher: An individual enrolled in his/her final practicum to be qualified for teacher

certification. He or she shall meet the same health standards as other staff and undergo background investigation. He or she may be included in staff:child ratios.

(25) Student volunteer: An individual at least 16 years of age from a recognized educational institution or who may receive credit, reimbursement for expenses or a stipend for providing services in a trainee capacity under supervision of a staff member at all times when providing direct care to children shall not be counted in the staff:child ratio.

(26) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements and children's needs and accountability for their care. Adequate supervision also requires the director, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios.

(27) Suspend: To void the regular registration of a child care center operated by a religious body.

(28) Teacher/caregiver: Any person whose duties include direct care, supervision, and guidance of children in a child care center.

(29) Toddler: A child 12 months of age or older but younger than 24 months of age.

(30) Training: Participation by child care center staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the child care center and in subject areas related to: administration, child growth and development and health and safety (such as, but not limited to child care, nutrition, infection control, communicable disease management and causes and signs of child abuse and neglect). Training for directors may also be in areas related to supervision of child care staff or program administration.

(31) Two-year olds: A child 24 months of age or older but younger than 3 years of age.

(32) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

114-522. PROCEDURES.

A. Pre-application consultation

(1) A potential operator may secure information about important items to consider before starting a child care facility by contacting staff of the State or Regional Child Care Licensing Office.

(2) Facilities owned and operated by a local church congregation, established religious denomination, religious college or university which does not receive state or federal financial assistance for child care services may secure information about the registration and inspection process for a child care facility by contacting staff of the State or Regional Child Care Licensing Office.

(3) Facilities owned and operated by a local church congregation, established religious denomination, religious college or university which receive funds through the state or federal government or which voluntarily elect to be licensed, may secure information about the licensing process by contacting staff of the State or Regional Child Care Licensing Office.

B. Registration

(1) An application for a registration shall be completed on appropriate Department forms and shall be signed by the director. The Department representative shall provide the applicant with the required number of forms, a copy of current regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the facility.

(2) After giving the applicant at least two working days notice, Department staff shall arrange a registration study during an on-site visit to the proposed facility for determining compliance with applicable regulations.

(3) Upon request of the Department, health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(4) The Department shall review the completed application form, completed inspection report, completed health and fire inspection reports, current child abuse and criminal history background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a registration and shall take one of the following actions:

(a) Issue a regular registration if all the provisions of the regulations and statute for the operation of a child care center have been met;

(b) Issue a provisional registration with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or

(c) Deny the issuance of a registration if one or more violations seriously threaten the health, safety or well being of the children.

(5) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional registration.

(6) If a registration is issued, the Department staff shall mail the registration directly to the director.

(7) The registration shall state clearly the name of the director; the address and type of child care facility, the date on which the registration was issued and will expire, and the maximum number of children to be present in the center at any one time.

(8) Department staff shall notify the director as follows if a provisional registration is issued or an application for a registration is denied:

(a) If a provisional registration is issued, the Department shall notify the director in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the director to complete a written plan to correct each violation as approved by the Department; or

(b) If a registration is denied or suspended, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the department and according to established appeals procedure for the department. Upon appeal, the decision of the department is final unless appealed by a party pursuant to an Administrative Law Judge.

(9) If a facility is found to be in operation after the Department has denied the application for the registration and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

C. Provisions of the registration

(1) A regular registration issued by the Department to the child care center shall be valid for two years from date of issuance, unless suspended by the Department or voluntarily surrendered by the director; provided however, that a change in location, ownership or sponsorship of the facility shall automatically void the registration.

(2) A provisional registration issued by the Department to a child care center shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.

(3) A provisional registration shall be amended from a provisional to a regular registration when all deficiencies have been verified as corrected.

(4) An application for a registration may be denied or suspended by the Department if the director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

D. Inspection and consultation

(1) Department staff may visit and inspect a child care center operated by religious bodies at anytime during the hours of operation without prior notice to verify regulatory compliance with staff:child ratios.

(2) Department staff may also visit the facility under the following conditions:

(a) The facility requests in writing that a Department representative visit to discuss problems related to the applicable regulations or other matters of concern;

(b) The facility has not applied for registration to the Department as mandated by law; or

(c) There has been a report of child abuse or child neglect involving the facility.

(3) Upon receipt of a regulatory complaint on staff:child ratios, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

(4) Fire and health officials may visit the facility under the following conditions:

(a) When there is a complaint against the facility citing health and fire regulations violations that threaten serious harm to the children;

(b) When inspections have been requested by Department staff for registration; or

(c) When verification is needed that deficiencies cited by fire and/or health officials have been corrected.

E. Reasons for registration denial, suspension or non-renewal

(1) A registration may be denied, withdrawn or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

(2) A registration may be denied, withdrawn, or non-renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

F. Reporting of changes affecting registration

(1) The director shall immediately report to the Department when an occurrence takes place that may affect the status of the registration including the following:

(a) Change in director, ownership, or sponsorship;

(b) Change in center location; and

(c) Major renovations or alterations to the building.

G. Registration renewal

(1) One hundred and twenty (120) days prior to the expiration date of the current registration, Department staff shall notify the director in writing of the time and requirements for renewal and shall request health and fire inspections.

(2) The same Department actions cited in 114-522B(1-9) above are applicable to the renewal process, except that the Department shall initiate the registration renewal process one hundred and twenty (120) days in advance.

114-523. MANAGEMENT.

A. Display of registration

(1) The center shall display the current registration, as well as any violations in a prominent public place in the center. The back of the registration shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official registration number issued by the Department shall be included.

B. Capacity

(1) No child care center operated by religious bodies shall have present at any one time children in excess of the number for which it is registered.

(2) Exception: In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily for a maximum of 90 days to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

C. Child abuse

(1) The center shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services (CPS) or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The director and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

(a) Participate in informational conferences with CPS staff;

(b) Release records as appropriate, of children and staff upon request; and

(c) Allow access to the center premises for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

D. Reporting of incidents

(1) The center shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:

(a) Accidents or injuries involving any child occurring at the center requiring professional medical treatment; and

(b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

(a) A child who is missing from the premises, or who is left unattended in a vehicle operated by the child care center;

(b) Major structural damage to center;

(c) Charges or convictions of crimes against the director or any staff person;

(d) Reports of alleged child abuse involving the director or any staff person; and

(e) Death of a child while at the facility.

(i) In the event of the death of a child at the facility, the center shall also immediately notify emergency medical personnel, the child's parents, and law enforcement; and

(ii) Provide information for children and parents as appropriate.

(3) A follow-up report shall be submitted to the Department as soon as an investigation by facility is completed and corrective action is taken.

E. Child records

(1) The facility shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner.

(3) A child's record shall be maintained on file at the child care center and made available for review on-site by the Department only in the event of a CPS investigation, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the center;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address and telephone number of family physician or health resource;

(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the child care center;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the center during field trips and other away from the center activities; and

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities.

(4) A health record shall be maintained in the center for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the child care center;

(b) A current South Carolina Certificate of Immunization which shall be made available for review on-site; and

(c) Other health information if deemed necessary by the director of the center and/or by parent(s)/guardian(s).

F. Staff records shall include the following:

(1) Names, positions and hours of duty of staff members;

(2) Criminal history background records check forms for the director, staff, emergency person(s), and any volunteer(s) not meeting the definition at 114-521A(33);

(3) Record of training for director and staff;

(4) Health records for the director, staff, and emergency person(s) in accordance with 114-525G(1)(a-c).

G. Communication

(1) The center shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

H. Staffing

(1) Child abuse checks.

(a) The director or staff shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16-17-490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the director(s) on each staff person, except for volunteers in accordance with the following time lines:

(i) For the director(s) and at least two staff persons prior to the initial issuance of a regular or provisional registration;

(ii) For the director(s) and staff prior to employment;

(iii) For all other staff persons (including the emergency person) prior to employment; and

(iv) For all persons hired by the child care facility at each registration renewal.

(c) No child care center shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

(2) Background criminal history checks.

(a) To be employed by or to provide teacher/caregiver services at a child care facility, a person shall first undergo a State fingerprint review from SLED.

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No child care facility may employ a person, engage the services of or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to SC Code of Laws Section 23-3-430 or who has been convicted of:

(i) A crime listed in SC Code of Laws Chapter 3 of Title 16, Offenses Against the Person;

(ii) A crime listed in SC Code of Laws Chapter 15 of Title 16, Offenses Against Morality and Decency;

(iii) The crime of contributing to the delinquency of a minor, contained in SC Code of Laws Chapter 17 of Title 16 at Section 16-17-490;

(iv) The felonies classified A through F in SC Code of Laws Chapter 1 of Title 16 at Section 16-1-10A;

(v) The offenses enumerated in Chapter 1 of Title 16 at Section 16-1-10D; or

(vi) A criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

(d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility; however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.

(e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.

(3) Center director and/or center co-director(s).

(a) There shall be a center director and/or center co-director(s), who, operating within the organization's chain of command, is responsible for the following:

(i) Administration and management of the center;

(ii) Safety and protection of the children;

(iii) Development and implementation of policies and procedures;

(iv) Communication with parents about the policies and procedures of the center;

(v) Staff hiring, supervision and ongoing professional development; and

(vi) Compliance with all applicable laws and regulations of the child care center.

(b) The center director(s) or a designee shall be physically present on-site during the hours of the center's operation. A center co-director is required when the program operates more than 12 hours per day.

(c) The center director and center co-director(s) shall be at least 21 years of age and meet one of the following qualifications:

(i) A college or university degree in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;

(ii) A bachelor's degree from a college or university in any subject area and six months experience working with children in a licensed, approved or registered child care facility;

(iii) An associate's degree from a college or university in early childhood education, child development and/or child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;

(iv) A diploma in child development/early childhood education from an institution of higher learning or a child development associate (CDA) credential, and one year work experience in a licensed, approved or registered child care facility; or

(v) A high school diploma or General Educational Development (GED) certificate with at least one year of work experience in a licensed, approved or registered child care facility. That year shall have included supervision of child care staff. A director/co-director who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position, must have at least a high school Certificate of Completion with at least one year of work experience in a licensed, approved or registered child care facility. That year shall have included supervision of child care staff.

(4) Teacher(s)/caregiver(s)

(a) Teacher(s)/caregiver(s) shall meet the following qualifications:

(i) Be at least 18 years of age, and able to read and write.

(ii) A teacher/caregiver who began employment in a licensed, approved, or registered child care center in South Carolina after June 30, 1994, must have at least a high school diploma or GED and at least six months experience as a teacher/caregiver in a licensed, approved or registered child care facility.

(iii) A teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(iv) If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(v) Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(vi) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed, approved facility and was employed as of July 1, 1994, in a licensed or approved child care center in South Carolina is exempt from the high school diploma, GED, and Certificate of Completion requirements of (ii and iii) above.

(vii) A teacher/caregiver with an undergraduate college or university degree in early childhood, child development, or a related field may begin working with the children immediately without additional

supervision.

(b) Exception: A teacher/caregiver may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

(5) Professional development.

(a) The director shall participate in at least twenty clock hours of training annually. Training shall be age appropriate for the child population served by the child care center and at least five hours shall be related to program administration and at least five hours shall be in child growth and development and health and safety excluding first aid and CPR training. The remaining hours may come from, but not be limited to, the following areas: Safety, Health, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(b) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least fifteen clock hours annually. At least five clock hours shall be in child growth and development and at least five clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours may come from, but not be limited to, the following areas: Guidance, Curriculum Activities, Nutrition, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(c) When children with special needs are enrolled, the director and staff members shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(d) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(e) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(f) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the center at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

114-524. APPLICATION OF STAFF:CHILD RATIOS.

A. Children shall be directly supervised at all times by qualified staff persons.

(1) Directly supervised shall be defined as:

(a) For infants and toddlers: staff persons shall be in the same room or area as the children and the children shall be within their sight at all times; and

(b) For preschool and school age children: staff persons are in the same room or area, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed.

(2) The center shall have a written procedure to account for the presence of each child as the child enters and exits the premise, enters and exits a vehicle or moves to a new location in or around the center.

(3) There shall be at least two staff persons in the center at all times.

(4) Children in feeding chairs shall be constantly supervised.

(5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.

(6) Children shall not be subjected to:

(a) Withholding, forcing, or threatening to withhold or force food, sleep or toileting;

(b) The use of children to discipline other children; and

(c) Restraining children through drugs or mechanical restraints.

B. Ratios

(1) The following staffing ratios apply at all times children are present on the premises and during activities away from the center and shall be prominently posted in all classrooms.

STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:9	1:8	1:7
Three to four years	1:13	1:12	1:11
Four to five years	1:18	1:17	1:16
Five to six years	1:21	1:20	1:19
Six to twelve years	1:23	1:23	1:23

(2) When there are mixed age groups in the same room, the staff:child ratio shall be consistent with the age of the majority of the children when no infants or toddlers are in the mixed age group. When infants or toddlers are in the mixed age group, the staff:child ratio for infants and toddlers shall be maintained.

(3) For mixed age groups, with one or more infants or toddlers, the ratios applicable to the youngest child in the group apply.

C. Nap time staff:child ratios

(1) During nap times the following ratios apply as long as at least one other staff person is readily available for each group of children ages two and older:

NAP TIME STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:18	1:16	1:14
Three to four years	1:26	1:24	1:22
Four and older	1:36	1:34	1:32

D. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming, wading or near a water source. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

WATER SAFETY STAFF:CHILD RATIOS

Child Age	Staff:Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four to five years	1:6
Five years and older	2:25

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

114-525. HEALTH, SANITATION AND SAFETY.

A. Child health

(1) There shall be a statement from a parent/guardian attesting to the health status of the child within 30 days prior to admission and utilizing the appropriate DSS Form.

(2) Children shall be excluded from child care when they exhibit the conditions listed in the DHEC Exclusion Policy.

(3) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the center. Consumption of alcoholic beverages or use of other non–prescription narcotic or illegal substances is prohibited on the center premises. People who appear to be under the influence of alcohol or other drugs shall not be in the center when children are present.

B. Sanitation

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the center, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

C. Emergency medical plan

(1) The center shall have an emergency medical plan to address the following:

(a) Medical conditions under which emergency care and treatment is warranted;

(b) Steps to be followed in a medical emergency;

(c) The hospital or source of health care to be used;

(d) The method of transportation to be used; and

(e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

D. Medications or medical procedures

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures.

(a) All medications shall be used only for the child for whom the medication is labeled;

(b) Medications shall not be given in excess of the recommended dose; and

(c) Prescribed special medical procedures ordered for a specific child shall be written, signed and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications.

(a) All medications shall be kept in their original labeled containers. The child's first and last name shall be on all medications.

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture.

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log.

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication and a copy provided to the child's parent(s)/guardian(s).

(4) Medication errors.

(a) Medication errors, e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication; shall be recorded in the child's record.

(b) The parent shall be immediately notified and notified in writing of a medication error or a suspected adverse reaction to a medication.

E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

F. Diapering

(1) Each room in which children who wear diapers are cared for shall have its own diaper-changing area adjacent to the hand-washing sink.

(2) Facilities caring for infants shall provide a diaper changing area located within clear view.

(3) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(4) Diapering surfaces shall be sanitizable.

(5) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(6) Diapering surfaces shall be cleaned and sanitized after each use by washing to remove visible soil followed by wiping with an approved sanitizing solution (e.g. 1 tablespoon liquid chlorine bleach per one quart of water) and/or disposable, non absorbent paper sheets approved for this purpose and shall be discarded immediately after each diapering.

(7) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie, or in a manner approved by OSHA or the county in which the center is operating. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with a solution of chlorine bleach and water, or in a manner approved by OSHA or the county in which the center is operating.

(8) Diapering shall occur only at a diapering changing area or in a bathroom.

(9) Diapering changing areas shall not be used for any purpose other than for diapering.

(10) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(11) Each waste and diaper container shall be labeled and clean and free of build-up of soil and odor. Wastewater from such cleaning operations shall be disposed of as sewage.

(12) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within arm's reach of diaper changing area separate from other trash. Soiled non-disposable items shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(13) Disposable non-absorbent paper sheets shall be disposed of immediately after diapering is completed.

(14) Soiled disposable diapers shall be disposed outside the building daily. Soiled non-disposable diapers shall be kept in a sealed plastic bag and returned to the parent daily.

(15) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(16) No child shall be left unattended while being diapered.

G. Staff health

(1) The director shall maintain the following records in the center for herself/himself, staff, and emergency person(s):

(a) Medical statements required by the Department and completed by the staff person verifying whether his/her health is satisfactory. Medical statements shall be updated as necessary;

(b) A health assessment from a health care provider assessing the ability of the staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the director and staff at least every four years after the initial assessment or as necessary; and

(c) Written evidence from a physician or health resource attesting that each staff person is free from communicable tuberculosis at the time of employment and subsequently according to state statute.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a child care center in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the director, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the child care center until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the center, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

H. Fire safety and emergency preparedness

(1) Private and public child care centers shall comply with the regulations and codes of the State Fire Marshal.

(2) In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

(3) The facility shall have an up to date written plan for evacuating in case of a fire, natural disaster or other threatening situation that may pose a health or safety hazard. The facility shall also include procedures for staff training in this emergency plan.

I. Transportation

(1) If the center provides or arranges for transportation through contract, the following transportation requirements apply:

(a) The staffing ratios specified in 114-524B(1-3) apply. The driver of the vehicle shall not be counted in the ratios for infants or toddlers;

(b) Each child shall be secured in an individual, age-appropriate safety restraint at all times the vehicle is in motion;

(c) Safety restraints shall be used in accordance with the manufacturer’s instructions;

(d) A child shall not be left unattended in a vehicle;

(e) Placement of children in the vehicle shall be in accordance with all applicable state and federal laws;

(f) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725A(4) of the Code of Laws of 1976;

(g) There shall be a first aid kit and emergency information on each child in the vehicle;

(h) Use of tobacco products is prohibited in the vehicle;

(i) Written consent from the parent is required prior to transportation;

(j) When the facility provides transportation to and from the child's home, the facility staff shall be responsible for picking the child up and returning the child to a designated location; and

(k) The director and/or staff of the center shall provide the driver of the vehicle with a record that lists the name, address, and telephone number of the center, as well as names of children being transported.

(2) The following requirements apply for safe pick-up and drop-off:

(a) The center shall have safe crossways and pick-up and drop-off locations and communicate these locations to the parents;

(b) Children shall be directly supervised during boarding and exiting vehicles;

(c) The director and/or staff shall have on file, in the facility, written permission from parent(s)/guardian(s) for transporting children to and from the home, school, or other designated places, including center-planned field trips and activities; and

(d) Written transportation plans for routine travel shall be on file. Plans shall include a checklist to account for the loading and unloading of children at every location.

114-526. RESERVE FOR FUTURE USE.

114-527. PHYSICAL SITE.

A. Indoor space and conditions

(1) The director shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Department staff shall determine the total number of children to be cared for in each room by measuring and computing the rooms separately. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

(2) Ventilation.

(a) Child care areas, dining areas, kitchens and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.

(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(d) Windows accessible to children under 5 years of age that are above ground level of the building shall be adjusted to limit the opening to less than 6 inches or protected with guards that do not block outdoor light.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the facility.

(4) Lighting.

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

(5) Environmental hazards.

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, child care centers shall meet applicable lead base paint requirements, as established by the DHEC.

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers and the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident

or cause harm to the health and safety of the children.

(g) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

(6) Water supply.

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with the DHEC.

(b) The center shall have hot and cold water under pressure. (Forty PSI recommended) If an individual private well water supply is used, the director shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) Hot water shall be between 100 and 120 degrees Fahrenheit.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

(7) Temperature.

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the center.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

(8) Sanitation.

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

(9) Doors.

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails and railings.

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the center.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources.

(a) The center shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools unless ground fault devices are utilized.

(12) Bathrooms.

(a) There shall be at least one flush toilet for every 20 children over two years of age. Staff shall be included when determining availability of toilets if there are no staff rest rooms.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure for every 20 children over two years of age. Sinks shall be located in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Privacy shall be provided for toilets used by preschool and school age children.

(g) Floor and wall surfaces in the toilet area shall have smooth, washable surfaces. Carpeting is not permitted in the toilet area.

(h) Toilets, toilet seat adapters, sinks, and restrooms shall be cleaned at least daily and shall be in good repair.

(i) Liquid or granular soap and disposable towels shall be provided at each sink.

(j)` Children shall not be left unattended in a bathtub or shower.

(k) Easily cleanable receptacles shall be provided for waste material. Toilet rooms used by women shall be provided with at least one covered waste receptacle.

(l) Bathroom facilities shall be completely enclosed.

B. Outdoor space

(1) The director shall provide at least seventy-five (75) square feet of outdoor play space per child. Where outdoor space is insufficient at the center, the director and/or staff may take the children outdoors in shifts or utilize parks or other outdoor play areas which meet safety requirements and which are easily accessible.

(2) The outdoor space shall be free from hazards and litter.

(3) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(4) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

C. Furniture, toys, and recreational equipment

(1) Shall be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment.

(2) Shall meet the standards of the CPSC, if applicable. Recalled products listed by the CPSC shall not be accessible to children.

(3) Shall be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time.

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used they shall have waterproof, washable, comfortable pads.

(5) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy.

(6) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment.

(7) Swings shall be located to minimize accidents and shall have soft and flexible seats.

(8) Cushioning material shall extend at least six feet beyond the equipment and swings.

(9) Slides shall have secure guards along both sides of the ladder and placed in a shaded area.

(10) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun.

(11) Outdoor equipment shall be arranged so that children can be seen at all times.

(12) The height of play equipment shall be developmentally and size appropriate.

(13) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage.

(14) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points.

(15) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and Materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

D. Rest equipment

(1) Cribs shall meet the requirements of the CPSC.

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler and preschool child, and used only by that child until they have been sanitized.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

E. Environmental hazards

(1) Poisons or harmful agents.

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be of a type applied by a licensed exterminator in a manner approved by the United States Environmental Protection Agency. Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards.

(a) Swimming pools located at the center or used by the center shall conform to the regulations of DHEC for construction, use, and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices;

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are not permitted in the center or on the premises without the express permission of the authorities in charge of the premises or property. This does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned properly housed, fed and cared for and have had required vaccinations, as appropriate. Live animals shall be excluded from areas where food for human consumption is stored, prepared or served;

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal;

(c) Animal litter and waste shall not be accessible to children; and

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

114-528. MEAL REQUIREMENTS AND PREPARATION, SERVING, STORAGE AND PROTECTION OF FOOD SUPPLIES, UTENSILS AND EQUIPMENT.

A. Meal requirements

(1) If food is provided by the facility, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view;

(b) Meals and snacks provided shall be in compliance with the USDA Child Care Food Program Guidelines. Centers that do not provide overnight care shall serve at least one meal and at least one snack that meet USDA Child Care Food Program Guidelines. Centers providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines;

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider;

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider; and

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in child care centers shall be from a source approved by the health authority and shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) The use of food in hermetically sealed containers that was not prepared in an approved food-processing establishment is prohibited.

(6) The use of home-canned foods is not allowed.

(7) The following requirements shall be met when it is necessary to provide meals through a catering service:

(a) Catered meals shall be obtained from a food service establishment approved by the DHEC;

(b) If adequate cleaning and sanitizing equipment is not available, only disposable eating and drinking utensils shall be used to serve catered meals or food; and

(c) The procedures and equipment used to transport catered meals shall be approved by the DHEC.

(8) Meals and snacks may be provided by the center or the parent. The center shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(9) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(10) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

B. Food preparation

(1) Adequate hand-washing facilities equipped with hot and cold water under pressure, supplied through a mixing faucet, shall be provided in the food preparation area. Hot water shall be between 100 and 120 degrees Fahrenheit. (Facilities shall not be required to install an additional hand-washing sink in the food preparation area if, in the opinion of the health authority, the existing hand-washing facilities are adequate.)

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water in an approved hand-washing sink before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean. The director shall ensure proper hair restraints are worn to protect from falling hair.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation. Staff shall use tobacco only in approved, designated areas.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit;

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit; and

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(8) Use of common drinking cups is prohibited.

(9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.

(10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

D. Storage

(1) All food shall be properly labeled and stored, and shall be protected against contamination.

(2) The director shall provide refrigeration units and insulated facilities, as needed, to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 degrees Fahrenheit or above, except during necessary periods of preparation.

(3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.

(4) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.

(5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.

(6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.

(7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.

(8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.

E. Cleaning, storage, and handling of utensils and equipment

(1) Tableware shall be washed, rinsed, and sanitized after each use.

(2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed and sanitized.

(3) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.

(4) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.

(5) After sanitation, all equipment and utensils shall be air-dried.

(6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.

(7) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept reasonably clean, be rinsed thoroughly of such solution, sanitized by one of the following methods:

(a) Complete immersion for at least 30 seconds in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit;

(b) Complete immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million of available iodine and having a pH no higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit;

(c) Complete immersion for at least 30 seconds in a clean solution containing at least 200 parts per million of quaternary ammonium at a temperature of at least 75 degrees Fahrenheit; or

(d) Complete immersion in hot water at a temperature of 170 degrees Fahrenheit in a three-compartment sink.

(8) Other chemical sanitizing agents may be used which have been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which suitable field tests are available. Such sanitizing agents, in use solution, shall provide the equivalent bactericidal effect for a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75 degrees Fahrenheit.

(9) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(10) All dishwashing machines shall be approved by DHEC and shall meet applicable installation requirements.

(11) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.

(12) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.

(13) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

(14) Dish tables or drain boards of adequate size to properly handle soiled utensils prior to washing and for cleaned utensils following rinsing and sanitizing shall be provided.

114-529. INFANT AND TODDLER CARE, CARE FOR MILDLY ILL CHILDREN, AND NIGHT CARE.

A. Infant and toddler care

(1) Feeding, eating and drinking.

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use. Prepared formula and breast milk that is not frozen should not be saved for another day.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one-half inch or less.

(2) Feeding chairs.

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

(3) Sleeping.

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Cribs shall not be placed next to each other so that one child may reach into the other child's crib.

(d) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

(4) Equipment and materials.

(a) The infant and toddler room shall have chairs for staff persons to sit while holding and feeding children; and

(b) Indoor space shall be protected from general walkways where crawling children may be on the floor.

(c) Mobile walkers are not permitted.

B. Care for mildly ill children

(1) Parent notification and instructions.

(a) If a child becomes ill while in care, the center shall notify the parent or responsible party immediately;

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the center shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician; and

(c) If a center chooses to provide care to a mildly ill child, the center shall receive instructions from the parent for any special care needs of the child.

(2) Policies and procedures.

(a) If a center chooses to provide care to a mildly ill child, the center shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

(c) If a child is in a rest area due to illness, the child shall be directly supervised at all times.

(d) A hand-washing sink shall be in close proximity to the area designated for mildly ill children.

C. Night care

(1) Requirements for staffing ratios.

(a) Staff counted in the staffing ratios shall be awake, alert and attentive to the children at all times; and

(b) The supervision and ratio requirements for sleeping hours are the same as specified for napping in 114-524C.

(2) An unannounced emergency drill shall be held during sleeping hours at least every 60 days.

(3) Sleeping equipment.

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the center.

(b) Cots and portable beds are not permitted.

(4) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

(5) Bathing.

(a) If children bathe at the center, there shall be one bathtub or shower with a slip resistant surface for every ten children.

(b) Each child shall have his or her own clean towel and washcloth.

(6) The center shall make arrangements with the parent to provide clean appropriate nightclothes.

Fiscal Impact Statement:

The Department of Social Services estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal. The cost to child care providers to comply with the proposed regulations is not able to be determined because that type of data is not currently kept at the agency. Although providers will incur some costs, it is hoped that those costs can be minimized and grants to assist providers in meeting the new requirements may be available.

Statement of Rationale:

The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations. Child care licensing standards provide the foundation for ensuring safety and quality for children. In addition to ratio revisions, these proposed regulations improve readability and strengthen and clarify basic health and safety standards.

The improved readability and clarified basic health and safety standards will enable parents to be better-informed consumers of child care. Staff:child ratios and well-trained consistent caregivers are critical factors in child care. States with higher quality standards in their regulations report better outcomes for children.

High staff:child ratios improve quality for all children, but are most important for infants and toddlers.

The proposed regulations set new staff:child ratios.
When programs lower the number of children each adult cares for:

- Providers have more time for each child;
- Children can be more closely supervised, reducing danger to health and safety; and
- Children can be cared for and nurtured in a manner more similar to a homelike environment.

Positive outcomes for children will include:

- Increased interaction among adults and children;
- Enhanced language, social, and intellectual development;
- Less aggression and more cooperation among children;
- More likely to be better prepared to learn and more successful in school;
- Growing into productive citizens;
- Improving their academic performance;
- Increasing earning ability; and
- Decreasing potential for criminal activity.

The agency will implement the regulations with existing staff and resources, which have been maximized as a result of the transfer of the CCDF-financed ABC Child Care Program to DSS. Quality early childhood experiences have an economic and social benefit to the State:

- SC employers have reported that employees who have safe, dependable, high quality environments for their children while they work, demonstrate increased productivity and decreased absenteeism.
- Children in high quality child care are more likely to be ready to learn and successful in school and grow into contributing members of society rather than members of the welfare or corrections systems.

The positive implications of quality early childhood education and child care for juvenile justice, schools, and the work force are emphasized by the National Conference of State Legislatures (NCSL) in Early Childhood Care and Education: An Investment That Works (1997).

Lawrence J. Schweinhart of the High/Scope Perry Educational Research Foundation states: "…a high-quality program for young children living in poverty, over their lifetimes, improves their educational performance, contributes to their economic development, helps prevent them from committing crimes, and provides a high return on taxpayer investment."

Changes in ratios are minimal and implementation will be over a 4-year period. Changes in ratios only result in decreasing the number of infants and 2-3 year olds per caregiver by one child 2 years after the regulations become effective. At the end of 4 years, infants and 1-2 year old ratios are unchanged, 2-3 year olds will have decreased by 3 children per caregiver, and 3-12 year olds decrease by 2 children per caregiver.

Experiences reported from other states have shown that higher staff:child ratios have not adversely affected the market.

- When Arizona changed ratios from 1:8 to 1:5 for infants and from 1:40 to 1:15 for 4 year olds, the number of centers increased from 777 to 1,081.
- Ohio experienced an increase of 35-50% in the number of slots when infant ratios changed from 1:8 to 1:5.

In Florida reduced ratios…"Did not have a marked negative impact on the child care marketplace nor did . . . [they] significantly affect consumer costs."
Although providers may incur some costs, it is hoped that those costs can be minimized and that grants to assist providers in meeting the new requirements may continue to be available.
SC and GA currently allow more children per staff member for children 0-18 months than any of the other Southeastern states. SC's proposed ratios will result in the following comparisons to other Southeastern states:

- For children 0-12 months old, SC will equal KY, MS, and NC but will still lag behind TN, AL, and FL
- For children ages 2–3 years old, SC will move to comparable ratios with TN and AL, leaders in the region.

- For 3-year-old children, SC will be behind TN and AL but ahead of KY, MS, GA, NC, and FL.
- For 4-year-old children, SC will be comparable to AL and MS.
- For 5-year-old children, SC will lag behind KY, TN, and AL but will be slightly better than GA and MS and ahead of NC and FL.
- No changes are proposed for SC ratios for children 6 years and up. SC ratios lag behind KY but are better than GA, NC, and FL for 6 year olds.

Ratios in Neighboring States					
Ages	**South Carolina**		**Georgia**	**North Carolina**	**Tennessee**
	Current	Proposed*			
6 weeks	1:6	1:5	1:6	1:5	1:4
9 months	1:6	1:5	1:6	1:5	1:4
18 months	1:6	1:6	1:8	1:6	1:6
27 months	1:10	1:7	1:10	1:10	1:7
3 years	1:13	1:11	1:15	1:15	1:9
4 years	1:18	1:16	1:18	1:20	1:15
5 years	1:21	1:19	1:20	1:25	1:20

*These proposed ratios would become effective in 2008.

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Document No. 2925
DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114
Statutory Authority: 1976 Code Sections 43-1-80 and 20-7-2980 et seq.

114-510. Regulations For The Licensing Of
Group Child Care Homes

Synopsis:

The South Carolina Department of Social Services (SCDSS) is required to review child care regulations every three years. These proposed regulations replace the current regulations in their entirety. These regulations update current requirements in order to clarify current regulations, and meet the United States Department of Health and Human Services (USDHHS) safety guidelines, as well as United States Department of Agriculture (USDA) food and snack regulations.

The areas in which theses regulations are amended include updating health, sanitation, and safety requirements to ensure consistency with the South Carolina Department of Health and Environmental Control (SCDHEC) and/or USDA's requirements. The regulations also clarify existing definitions and add some new ones.

Instructions:

Replace current sections 114-510 through 114-514 with new sections 114-510 through 114-514. Add new sections 114-515 through 114-519.

Text:

114-510. GENERAL PROVISIONS.

A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application, and enforcement of these regulations.

B. Applicability

(1) These regulations apply to group child care homes as defined in section 114-511A(9) relating to definitions.

(2) These regulations apply equally to profit, not for profit and private child care homes.

(3) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools normally conducted during vacation periods;

(h) Facilities for the mentally retarded provided in Chapter 21, Title 44;

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44; and

(j) Child care centers owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for child care services; however, these facilities must comply with the provisions of Sections 20-7-2900 through 20-7-2975 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Sections 20-7-2700 through 20-7-2780 and Sections 20-7-2980 through 20-7-3090.

C. Access to and within the group child care home, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

114-511. DEFINITIONS.

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, who has completed, signed and submitted a Department of Social Services application form and other requirements to the Department in order to obtain a group child care license.

(2) Blood-Borne Pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(3) Central Registry of Child Abuse and Neglect: An automated, computerized listing, maintained by the Department of Social Services containing the names(s), address(es), birth date(s), identifying characteristics and other information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(4) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care facility; or up to 18 years of age if the child qualifies as special needs.

(5) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(6) Complete Application: An application is complete on the date of receipt of the last document required by the Department in order to issue a license.

(7) Department: Refers to the Department of Social Services.

(8) Emergency Person: An individual 18 years of age or older, not regularly employed by the group child care home who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(9) Group Child Care Home: A residence occupied by the operator in which he/she regularly provide child care for at least seven but not more than twelve children, unattended by a parent or a legal guardian including those children living in the home and children received for child care who are related to the resident teacher/caregiver. However, an occupied residence in which child care is provided only for a child or children related to the resident teacher/caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a group child care home.

(10) Infant: A child under 12 months of age.

(11) License: A written notice issued by the Department to a private facility approving the commencement of operations of a group child care home.

(12) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(13) Operator: The person held legally responsible for the group child care home operation.

(14) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(15) Preschool Child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(16) Provisional License: A license issued by the Department to an operator when the operator is temporarily unable to comply with all the requirements for a license.

(17) Regular License: A license issued by the Department for two years to a operator showing that the licensee is in compliance with the regulations of the Department at the time of issuance and authorizing the licensee to operate in accordance with the regulations of the Department.

(18) Renewal: To grant an extension of a regular registration.

(19) Revocation: To void the regular license of a child care facility.

(20) School-Aged Child: A child at least old enough to enroll in public kindergarten.

(21) Sex Offender Registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(22) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(23) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements and children's needs and accountability for their care. Adequate supervision also requires the operator, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios, being in the room at all times or on the playground at all times when children are present.

(24) Teacher/Caregiver: Any persons whose duties include direct care, supervision and guidance of children in a child care facility.

(25) Toddler: A child 12 months of age or older, but younger than 24 months of age.

(26) Training: Participation by child care home staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the group child care home and in such subject areas related to: child care, child growth and development and/or early childhood education, nutrition, infection control/communicable disease management and causes, health and safety, signs and treatment of child abuse and/or neglect and shall include alternatives to corporal punishment. Training for operators may also be in areas related to supervision of child care staff or program administration.

(27) Two-year olds: A child 24 months of age or older but younger than three years of age.

(28) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

114-512. PROCEDURES.

A. Licensing

(1) Any person, corporation, partnership, voluntary association or other organization, whether private or public, may secure information about the licensing process by contacting staff of the State or Regional Child Care Licensing Office.

(2) An application for a license shall be completed on appropriate Department forms and shall be signed by the operator. The Department representative shall provide the applicant with the required number of forms, a copy of current group child care home regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the home.

(3) After giving the applicant at least two working days notice, Department staff shall arrange a licensing study during an on-site visit to the proposed group child care home to determine compliance with applicable regulations.

(4) Health and fire officials shall inspect the group child care home to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(5) The Department shall review the completed application form, completed licensing inspection report, completed health and fire inspection reports, current child abuse and criminal history background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a license and shall take one of the following actions:

(a) Issue a regular license if all the provisions of the regulations and statute for the operation of a group child care home have been met;

(b) Issue a provisional license with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or

(c) Deny the issuance of a license if one or more violations seriously threaten the health, safety, or well being of the children.

(6) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional license.

(7) If a license is issued, the Department staff shall mail the license directly to the operator.

(8) The license shall state clearly the name of the operator, the address and type of child care facility, the date on which the license was issued and will expire, and the maximum number of children to be present in the group child care home at any one time.

(9) Department staff shall notify the operator as follows if a provisional license is issued or an application for a license is denied:

(a) If a provisional license is issued, the Department shall notify the operator in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the operator to complete a written plan to correct each violation as approved by the Department; or

(b) If a license is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the Department and according to established appeals procedure for the Department. Upon appeal, the decision of the Department is final unless appealed by a party pursuant to an Administrative Law Judge.

(10) If a group child care home is found to be in operation after the Department has denied the application for the license and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

B. Provisions of the license

(1) A regular license issued by the Department to the group child care home shall be valid for two years from date of issuance, unless revoked by the Department or voluntarily surrendered by the operator; provided however, that a change in location, ownership or sponsorship of the group child care home shall automatically void the license.

(2) A provisional license issued by the Department to a group child care home shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.

(3) A provisional license shall be amended from a provisional to a regular license when all deficiencies have been verified as corrected.

(4) An application for a license may be denied or the license may be revoked by the Department if the operator and any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

C. Inspection and consultation

(1) Department staff may visit and inspect a group child care home at anytime during the hours of operation without prior notice to verify regulatory compliance.

(2) Department staff shall provide at least two working days notice to the operator prior to conducting an initial or renewal inspection.

(3) The operator and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.

(4) The Department has the right to interview staff and parents relating to regulatory compliance.

(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the home to investigate the complaint. If the complaint is written, the Department shall provide a copy to the operator upon request.

(6) The operator may request consultation from the Department. Department staff shall provide technical assistance to the operator as requested.

D. Reasons for license denial, revocation, or non-renewal

(1) A license may be denied, revoked or not renewed by the Department if the operator or teacher/caregiver has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

(2) A license may be denied, revoked or non-renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

E. Reporting of changes affecting license

(1) The operator shall immediately report to the Department when an occurrence takes place that may affect the status of the license including the following:

(a) Change in operator;

(b) Change in location; and

(c) Major renovations or alterations to the home.

F. License renewal

(1) One hundred and twenty (120) days prior to the expiration date of the current license, Department staff shall notify the operator in writing of the time and requirements for renewal and shall request health and fire inspections.

(2) The same Department actions cited in 114-512A(2-10), above are applicable to the renewal process, except that the Department shall initiate the license renewal process one hundred and twenty (120) days in advance.

114-513. MANAGEMENT, ADMINISTRATION, AND STAFFING.

A. Display of license

(1) The group child care home shall display the current license, as well as any violations in a prominent public place in the group child care home. The back of the license shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official license number issued by the Department shall be included.

B. Capacity

(1) No group child care home shall have present at any one time children in excess of the number for which it is licensed.

C. Child abuse

(1) The group child care home shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services (CPS) or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The operator and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

(a) Participate in informational conferences with CPS staff;

(b) Release records as appropriate, of children and staff upon request; and

(c) Allow access to the group child care home for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

D. Reporting of incidents

(1) The operator shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:

(a) Accidents or injuries involving any child occurring at the group child care home requiring professional medical treatment; and

(b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

(a) A death of a child that occurs at the group child care home;

(b) A child who is missing from the premises or who is left unattended in a vehicle operated by the group child care home;

(c) Major structural damage to the group child care home;

(d) Natural or man-made disasters, including fire or extreme weather conditions, which cause the group child care home to be closed for more than one day of scheduled operation;

(e) An occurrence that requires the services of a fire or police department, which affects the health and safety of children;

(f) Charges or convictions of crimes against the operator or any staff person; or

(g) Reports of alleged child abuse involving the operator or any staff person.

(3) A follow-up report shall be submitted to the Department as soon as an investigation of the group child care home is completed and corrective action is taken.

(4) Parents should be notified if a legal or health issue occurs which impacts the health and safety of his/her child. This notification should occur at the time of pick-up or on the next day the child is in care.

E. Death of a child

(1) If the child dies while at the group child care home, the following shall be done:

(a) Immediately notify emergency medical personnel, the child's parents, and law enforcement;

(b) Immediately notify the licensing agency; and

(c) Provide information for children and parents as appropriate.

F. Parent access and communication

(1) The operator shall permit the parent of a child in care free and full access to his or her child without prior notice, while their child is receiving care, unless there is a court order limiting parental access. This free access must not disrupt instructional activities and classroom routines.

(2) The operator shall develop a policy for the release of children, which includes a security system to prevent the inappropriate release of a child to an unauthorized person. This policy shall be communicated with the parent upon admission.

(3) Parents shall be provided with the following information upon admission:

(a) The right of parents to free and full access to their child in accordance with 114-513F(1);

(b) The policy and procedures on release of children specified in 114-513F(2);

(c) The program activity schedule for their child's age group and child care area;

(d) The parent's responsibility to obtain necessary immunizations and physical examinations for their child;

(e) The policy and procedures for the administration of medications; and

(f) The policy and practices regarding the discipline and behavior management of children. This statement shall be re-signed if any discipline policy changes are made.

(4) Parents and staff shall sign and date an agreement, maintained on file and updated annually, that both parties have read and understand all policies relating to the operation of the group child care home.

G. Child records

(1) The operator shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner, but shall be immediately available to the Department, the child's teacher/caregiver, parent, or guardian upon request.

(3) Access to records is limited to the above unless requested by court order.

(4) Entries in a child's record shall be legible, dated and signed by the individual making the entry.

(5) A child's record shall be maintained on file at the group child care home and made available to the Department upon request, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of both parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the group child care home;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address and telephone number of family physician or health resource;

(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the group child care home;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the group child care home during field trips and other activities away from the group child care home;

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities; and

(j) A written statement, signed by the parents, acknowledging their understanding and acceptance of the disciplinary policies of the group child care home.

(6) A health record shall be maintained in the group child care home for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the group child care home on the appropriate Department of Social Services (DSS) Form;

(b) A current South Carolina Certificate of Immunization; and

(c) Other health information if deemed necessary by the operator of the group child care home and/or by parent(s)/guardian(s).

(7) Emergency information for each child shall be easily and immediately accessible while at the group child care home, during transportation, and during any trips away from the premises, and it shall include the following:

(a) The full name of both parents/guardian, and updated address, work, home and mobile numbers where they can be reached during the time the child is in the group child care home;

(b) The name, address, telephone number and relationship of at least two individuals designated by the parents/guardian to be contacted in an emergency and who have the authority to obtain emergency medical treatment for the child;

(c) The name, address and telephone number of the child's physician, and the emergency care medical and dental care provider; and

(d) Health insurance information.

(8) Emergency information shall be updated by the parent as changes occur.

H. Staff records shall include the following:

(1) Names, positions and hours of duty of staff members;

(2) Written policies that refer to or apply to DSS licensing regulations;

(3) Three letters of reference for the group child care home operator;

(4) Criminal history background records check forms for the operator, staff, emergency person(s) and volunteer(s) not meeting the definition at 114-511A(28);

(5) Record of training for operator and staff; and

(6) Written statements signed by all staff members regarding disciplinary policies of the group child care home.

(7) The operator shall maintain health records in the group child care home for himself/herself, staff, emergency person(s) and volunteer(s) in accordance with 114-515G(1)(a) and (b).

I. Confidentiality and applicable laws and regulations

(1) The group child care home shall have written policy to safeguard the confidentiality of all records.

(2) A child's record, emergency information, photograph and other information about the child or family and information that may identify a child by name or address is confidential and may not be copied, posted on a web site or disclosed to unauthorized persons, without written consent from the child's parent.

(3) The group child care home shall comply with all applicable federal, state and local laws, regulations and ordinances.

(4) The operator shall make available at least one copy of Section 20-7-2700 et seq., Code of Laws of South Carolina, a copy of sections of the Children's Code related to child abuse and neglect and a copy of the current regulations for group child care homes that will be provided by the Department.

J. Communication

(1) The group child care home shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

K. Staffing

(1) Child abuse checks.

(a) The operator and staff members shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16-17-490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the operator(s) on each staff person, except for volunteers in accordance with the following time lines:

(i) For the operator prior to the initial issuance of a regular or provisional license.

(ii) For teacher/caregivers, prior to working alone with children.

(iii) For all other staff persons (including the emergency person) prior to employment.

(iv) For all persons hired by the group child care home at each license renewal.

(c) No group child care home shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

(2) Background criminal history checks.

(a) To be employed by or to provide teacher/caregiver services at a group child care home, a person shall first undergo a State fingerprint review from the State Law Enforcement Division (SLED).

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No group child care home may employ a person, engage the services of, or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to Section 23-3-430 or who has been convicted of:

(i) A crime listed in Chapter 3 of Title 16, Offenses Against the Person;

(ii) A crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;

(iii) The crime of contributing to the delinquency of a minor, contained in Section 16-17-490;

(iv) The felonies classified A through F in SC Code of Laws Chapter 1 of Title 16 at Section 16-1-10A;

(v) The offenses enumerated in Chapter 1 of Title 16 at Section 16-1-10D; or

(vi) A criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

(d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility;

however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.

(e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.

(3) Operator and primary caregiver.

(a) The operator or primary caregiver shall be responsible for the following:

(i) Administration and management of the group child care home;

(ii) Safety and protection of the children;

(iii) Development and implementation of policies and procedures;

(iv) Communication with parents about the policies and procedures of the group child care home;

(v) Teacher/caregiver hiring, supervision and ongoing professional development; and

(vi) Compliance with all applicable laws and regulations of the group child care home.

(b) The operator or the primary caregiver shall be physically present on-site during the hours of operation of the group child care home.

(c) The operator shall be at least 21 years of age and meet one of the following qualifications:

(i) A bachelor's degree or advanced degree from a state-approved college or university in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;

(ii) A bachelor's degree from a state-approved college or university in any subject area, six months experience working with children in a licensed, approved or registered child care facility;

(iii) An associate's degree from a state-approved college or university in early childhood education, child development, child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;

(iv) A diploma in child development/early childhood education from a state-approved institution or a child development associate (CDA) credential, and one year work experience in a licensed, approved or registered child care facility; or

(v) A high school diploma or General Educational Development Certificate (GED) with 3 years experience in a licensed, approved or registered child care facility. One year shall include supervision of child care staff. However, a operator or primary caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed, approved or registered child care facility.

(4) Teacher(s)/caregiver(s).

(a) Teacher(s)/caregiver(s)shall meet the following qualifications:

(i) Be at least 18 years of age, and able to read and write.

(ii) A teacher/caregiver who began employment in a licensed or approved child care facility in South Carolina after June 30, 1994, must have at least a high school diploma or GED and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. However, a teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed or approved child care facility. Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed or approved child care facility.

(iii) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed or approved facility and was employed as of July 1, 1994, in a licensed or approved child care facility in South Carolina is exempt from the high school diploma, GED, and Certificate of Completion requirements of (b) above.

(iv) A teacher/caregiver with an undergraduate degree from a state approved college or university in early childhood, child development, or a related field may begin working with the children immediately without additional supervision.

(b) Exception: A teacher/caregiver/teacher may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

(5) Professional development.

(a) The operator shall provide orientation for all new teacher/caregiver(s), volunteer(s) and emergency person(s) prior to their employment and volunteering. This orientation shall include the following:

(i) Specific job duties and responsibilities;

(ii) The requirements of this chapter related to their job; and

(iii) The policies and procedures of the group child care home that affect the health and safety of children.

(b) The operator shall participate in at least fifteen (15) clock hours of training annually. At least five clock hours shall be related to program administration and at least five clock hours shall be in child growth and development, early childhood education and/or health and safety excluding first aid and CPR training. The remaining hours shall come from the following areas: Safety, Health, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by the Occupational Safety and Health Administration (OSHA).

(c) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least ten (10) clock hours of training annually. At least four clock hours shall be in child growth and development and at least four (4) clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours shall come from the following areas: Curriculum Activities, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(d) When children with special needs are enrolled, the operator and teacher/caregivers shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(e) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(f) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(g) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the group child care home at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

114-514. SUPERVISION.

A. Children shall be directly supervised at all times by qualified staff persons.

(1) Directly supervised means staff persons are physically near, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed.

(2) There shall be an additional teacher/caregiver present when attendance reaches nine children or when four or more of the children are younger than two years old.

(3) Children in feeding chairs shall be constantly supervised.

B. Nap time staff:child ratios

(1) During nap times staffing ratios do not change as long as at least one other staff person is readily available.

C. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming, wading or near a water source. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

WATER SAFETY STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four and older	1:6

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

114-515. HEALTH, SANITATION AND SAFETY.

A. Child health

(1) Children shall be excluded from child care when they exhibit the conditions listed in the DHEC Exclusion Policy.

(2) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the group child care home. Consumption of alcoholic beverages or use of other non–prescription narcotic or illegal substances is prohibited on the group child care home premises. People who appear to be under the influence of alcohol or other drugs shall not be in the group child care home when children are present.

B. Sanitation

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the group child care home, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

C. Emergency medical plan

(1) The group child care home shall have an emergency medical plan to address the following:

(a) Medical conditions under which emergency care and treatment is warranted;

(b) Steps to be followed in a medical emergency;

(c) The hospital or source of health care to be used;

(d) The method of transportation to be used; and

(e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

D. Medications or medical procedures

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures.

(a) All medications shall be used only for the child for whom the medication is labeled.

(b) Medications shall not be given in excess of the recommended dose.

(c) Prescribed special medical procedures ordered for a specific child shall be written, signed and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications.

(a) All medications shall be kept in their original labeled containers and have child protective caps. The child's first and last name shall be on all medications.

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture.

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log.

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication.

(4) Medication errors.

(a) Medication errors (e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication) shall be recorded in the child's record.

(b) Written documentation that the medication was given shall be provided to the parent.

(c) The parent shall be immediately notified of a medication error or a suspected adverse reaction to a medication.

E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

F. Diapering

(1) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(2) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(3) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with an approved solution of chlorine bleach and water.

(4) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(5) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within reach of diaper changing area separate from other trash. Soiled non-disposable diapers shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(6) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(7) No child shall be left unattended while being diapered.

G. Staff health

(1) The operator shall maintain the following records in the group child care home for herself/himself, staff, emergency person(s) and household members:

(a) Medical statements required by the Department and completed by the staff person verifying that his/her health is satisfactory. Medical statements shall be updated as necessary; and

(b) A health assessment from a health care provider assessing the ability of the operator, staff, and emergency staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the operator and teacher/caregivers at least every four years after the initial assessment or as necessary.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a group child care home in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the operator, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the group child care home until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the group child care home, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals, and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

H. Fire safety and emergency preparedness

(1) Group child care homes shall comply with the regulations and codes of the State Fire Marshal.

(2) The group child care home shall have an up to date written plan for evacuating in case of fire, a natural disaster or threatening situation that may pose a health or safety hazard. The group child care home shall also include procedures for staff training in this emergency plan.

(3) Portable heat sources will be used according to the manufacturers' instructions and kept in good working order and out of the reach of children.

I. Transportation

(1) If the operator provides or arranges for transportation, the following transportation requirements apply:

(a) The staffing ratios specified in 114-514A(2) apply. The driver of the vehicle shall not be counted in the ratios;

(b) Transportation and placement of children shall be in accordance with state and federal laws;

(c) A child shall not be left unattended in a vehicle;

(d) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725A(4) of the Code of Laws of 1976;

(e) Use of tobacco products is prohibited in the vehicle; and

(f) Written consent from the parent is required prior to transportation.

(2) The following requirements apply for safe pick-up and drop-off:

(a) The group child care home shall have safe crossways and designated pick-up and drop-off locations and communicate these locations to the parents; and

(b) Children shall be supervised during boarding and exiting vehicles.

114-516. PROGRAM.

A. Program of activities

(1) There shall be planned, daily program of activities for all children.

(2) Activities shall be developmentally appropriate.

(3) Staff shall plan and provide daily age-appropriate activities such as stories, music, art, cooking, living skills, puzzles, blocks, etc. in accordance with the child's developmental level.

(4) Children shall be provided daily indoor opportunities for freedom of movement.

(5) Quiet areas with supervision shall be made available to children desiring to be alone or to work on homework.

(6) Staff persons shall provide the opportunity for the children to ask questions and engage in conversations with others. Staff shall have frequent positive verbal communications with the children.

(7) Age appropriate radio and television, VCR tapes, DVDs and other media shall be previewed by the operator and staff and used only as a supplement and enhancement to the daily program. No child shall be required to view these media programs.

(8) All children, including infants and toddlers shall be given the opportunity for outdoor play, weather permitting.

(9) Napping expectations and time periods shall be developmentally appropriate and meet the needs of the individual child.

B. Discipline and behavior management

(1) The group child care home's discipline policy shall outline methods of guidance appropriate to the ages of the children. Positive, non-violent, non-abusive methods for managing behavior shall be implemented.

(2) All teacher/caregivers shall sign an agreement to implement the discipline and behavior management policy, with a statement that specifies no corporal punishment shall be used except when authorized in writing by the parent(s)/guardian(s); corporal punishment shall not exceed guidelines established in Section 20-7-490(2)(a) of the Code of Laws of South Carolina, 1976 amended.

(3) Emotional abuse is also prohibited, including but not limited to: profane, harsh, demeaning or humiliating language in the presence of children. Threatening, humiliating, ignoring, corrupting, terrorizing, or rejecting a child is prohibited.

(4) Withholding, forcing, or threatening to withhold or force food, sleep or toileting is prohibited.

(5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.

(6) The use of children to discipline other children is prohibited.

(7) Children shall not be restrained through drugs or mechanical restraints.

(8) Each group child care home has the option to prohibit corporal punishment.

114-517. PHYSICAL SITE.

A. Indoor space and conditions

(1) The operator shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

(2) Ventilation.

(a) Child care areas, dining areas, kitchens, and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.

(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the group child care home.

(4) Lighting.

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

(5) Environmental hazards.

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to

children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, group child care homes shall meet applicable lead base paint requirements, as established by DHEC.

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers and the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident or cause harm to the health and safety of the children.

(g) Microwave ovens shall be inaccessible to children.

(h) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, and drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding, and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

(6) Water supply.

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with DHEC.

(b) The group child care home shall have hot and cold water under pressure. (Forty PSI recommended.) If an individual private well water supply is used, the operator shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) The hot water supply shall meet applicable requirements of DHEC.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

(7) Temperature.

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the group child care home.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

(8) Sanitation.

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

(9) Doors.

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails, and railings.

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the group child care home.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources.

(a) The group child care home shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools.

(12) Bathrooms.

(a) There shall be at least one flush toilet.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Toilets, toilet seat adapters, sinks and restrooms shall be cleaned at least daily and shall be in good repair.

(g) Liquid or granular soap and disposable towels shall be provided at each sink.

(h) Children shall not be left unattended in a bathtub or shower.

(i) Easily cleanable receptacles shall be provided for waste material.

B. Outdoor space

(1) The outdoor space shall be free from hazards and litter.

(2) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(3) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

C. Furniture, toys, and recreational equipment shall meet the following requirements:

(1) Be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment.

(2) Meet the standards of the U.S. Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children.

(3) Be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time.

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used, they shall have waterproof, washable, comfortable pads.

(5) All arts and crafts and play materials shall be nontoxic.

(6) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy.

(7) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment.

(8) Swings shall be located to minimize accidents and shall have soft and flexible seats.

(9) Cushioning material shall extend at least six (6) feet beyond the equipment and swings.

(10) Slides shall have secure guards along both sides of the ladder and placed in a shaded area.

(11) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun.

(12) Outdoor equipment shall be arranged so that children can be seen at all times.

(13) The height of play equipment shall be developmentally and size appropriate.

(14) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage.

(15) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points.

(16) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

D. Rest equipment

(1) Cribs shall meet the specification of the CPSC.

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler, and preschool child, labeled with the child's name and used only by that child.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

E. Environmental hazards

(1) Poisons or harmful agents.

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards.

(a) Swimming pools located at the group child care home or used by the group child care home shall conform to the regulations of DHEC for construction, use and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices.

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are to be kept in a locked drawer or cabinet.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned, properly housed, fed and cared for and have had required vaccinations, as appropriate;

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal;

(c) Animal litter and waste shall not be accessible to children; and

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

114-518. MEAL REQUIREMENTS AND PREPARATION, SERVING, STORAGE AND PROTECTION OF FOOD SUPPLIES.

A. Meal requirements

(1) If food is provided by the group child care home, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view;

(b) Meals and snacks provided shall be in compliance with the United States Department of Agriculture (USDA) Child Care Food Program Guidelines. Group child care homes that do not provide overnight care shall serve at least one meal and at least one snack, which meet USDA Child Care Food Program Guidelines. Group child care homes providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines;

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider;

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider; and

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in group child care homes shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) Meals and snacks may be provided by the group child care home or the parent. The group child care home shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(6) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(7) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

B. Food Preparation

(1) Adequate hand-washing facilities equipped with hot and cold water under pressure, supplied through a mixing faucet, shall be provided in or convenient to the food preparation area.

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit;

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit; and

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(8) Use of common drinking cups is prohibited.

(9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.

(10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

D. Storage

(1) All food shall be properly labeled and stored, and shall be protected against contamination.

(2) The operator shall provide refrigeration units to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 Fahrenheit or above, except during necessary period of preparation.

(3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.

(4) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.

(5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.

(6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.

(7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.

(8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.

E. Cleaning, storage, and handling of utensils and equipment

(1) Tableware shall be washed, rinsed, and sanitized after each use.

(2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized.

(3) Residential dishwashers may be used for washing and rinsing providing that dishes and utensils are sanitized upon removal.

(4) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.

(5) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.

(6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.

(7) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.

(8) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.

(9) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

114-519. INFANT AND TODDLER CARE, CARE FOR MILDLY ILL CHILDREN, AND NIGHT CARE.

A. Infant and toddler care

(1) Stimulation and nurturing.

(a) Children shall not remain in their cribs or play equipment for other than sleeping and specific, short time-limited quiet play.

(b) Infants and toddlers shall be routinely held, talked to, rocked, caressed, carried, nurtured, read to, sung to and played with throughout the day.

(c) There shall be toys and materials that encourage and stimulate children through seeing, feeling, hearing, smelling and tasting.

(2) Programs for infants and toddlers.

(a) Staff shall provide appropriate attention to the needs of children.

(b) The daily program for infants and toddlers shall include goals for children, which promote healthy child development and allow for individual choice and exploration.

(c) Information about the child's daily needs and activities shall be shared with parents.

(3) Feeding, eating and drinking.

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one half inch or less.

(4) Feeding chairs.

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a T-shaped safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

(5) Sleeping.

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

(6) Equipment and materials.

(a) Indoor space shall be protected from general walkway where crawling children may be on the floor.

(b) Mobile walkers are not permitted.

B. Care for mildly ill children

(1) Parent notification and instructions.

(a) If a child becomes ill while in care, the operator shall notify the parent or responsible party immediately.

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the group child care home shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician.

(c) If an operator chooses to provide care to a mildly ill child, the operator shall receive instructions from the parent for any special care needs of the child.

(2) Policies and procedures.

(a) If an operator chooses to provide care to a mildly ill child, the group child care home shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

(c) If a child is in a rest area due to illness, the child shall be supervised at all times.

C. Night care

(1) In group child care homes providing overnight care, at least two adults shall be on the premises at all times, physically near, readily accessible, and responsible for the ongoing activity of each child and able to intervene when needed.

(2) The operator shall present written evidence that a plan has been worked out whereby an additional, outside person can be quickly summoned to assist in an emergency.

(3) Sleeping equipment.

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the group child care home.

(b) Cots and portable beds are not permitted.

(4) Bedtime.

(a) Children shall be provided the opportunity to read or be read to before bedtime.

(b) There shall be books, games, and other quiet time activities for the child prior to bedtime.

(c) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

(5) Bathing.

(a) If children bathe at the group child care home, there shall be a bathtub or shower with a slip resistant surface.

(b) Each child shall have his or her own clean towel and washcloth.

(6) Night clothes.

(a) The group child care home shall make arrangements with the parent to provide clean appropriate nightclothes.

Fiscal Impact Statement:

The Department of Social Services estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal. The cost to child care providers to comply with the proposed regulations is not able to be determined because that type of data is not currently kept at the agency. Although providers will incur some costs, it is hoped that those costs can be minimized and grants to assist providers in meeting the new requirements may be available.

Statement of Rationale:

The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in group child care homes, through the formulation, application and enforcement of these regulations. Child care licensing standards provide the foundation for ensuring safety and quality for children. These proposed regulations improve readability and strengthen and clarify basic health and safety standards.

The improved readability and clarified basic health and safety standards will enable parents to be better-informed consumers of child care. Staff:child ratios and well-trained consistent caregivers are critical factors in child care. States with higher quality standards in their regulations report better outcomes for children.

The agency will implement the regulations with existing staff and resources, which have been maximized as a result of the transfer of the CCDF-financed ABC Child Care Program to DSS. Quality early childhood experiences have an economic and social benefit to the State:
SC employers have reported that employees who have safe, dependable, high quality environments for their children while they work, demonstrate increased productivity and decreased absenteeism.
Children in high quality child care are more likely to be ready to learn and successful in school and grow into contributing members of society rather than members of the welfare or corrections systems.

The positive implications of quality early childhood education and child care for juvenile justice, schools, and the work force are emphasized by the National Conference of State Legislatures (NCSL) in Early Childhood Care and Education: An Investment That Works (1997).

Lawrence J. Schweinhart of the High/Scope Perry Educational Research Foundation states: "…a high-quality program for young children living in poverty, over their lifetimes, improves their educational performance, contributes to their economic development, helps prevent them from committing crimes, and provides a high return on taxpayer investment."

Changes in licensing requirements are minimal. Although providers may incur some costs, it is hoped that those costs can be minimized and that grants to assist providers in meeting the new requirements may continue to be available.

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Additional Selected Research

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