

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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GENERAL ASSEMBLY

STEPHEN T. DRAFFIN, DIRECTOR
LYNN P. BARTLETT, EDITOR

P.O. BOX 11489
COLUMBIA, SC 29211
TELEPHONE (803) 734-2145

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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.

THE SOUTH CAROLINA STATE REGISTER

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

STYLE AND FORMAT OF THE SOUTH CAROLINA STATE REGISTER

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

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

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

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

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

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

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

Executive Orders are actions issued and taken by the Governor.

2000 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	3/10	4/14	5/12	6/9	7/14	8/11	9/8	10/13	11/10	12/8
Publishing Date	1/28	2/25	3/24	4/28	5/26	6/23	7/28	8/25	9/22	10/27	11/24	12/22

REPRODUCING OFFICIAL DOCUMENTS

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

PUBLIC INSPECTION OF DOCUMENTS

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

CERTIFICATE

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

Lynn P. Bartlett
Editor

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be renewable once.

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SUBSCRIPTIONS

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

Name _____

Address _____

Telephone _____

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 South Carolina General Assembly Home Page: www.lpitr.state.sc.us

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2427	SR24-3	Principal Induction Program	3 11 00	Board of Education
2425 R222	SR24-3	Textbook Adoption	3 11 00	Board of Education
2430	SR24-3	Hunt Units and Wildlife Management	3 13 00	Dept of Natural Resources
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2424	SR24-4	Summer Programs	3 28 00	Board of Education
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2407		Cervidae Entering South Carolina	5 09 00	Clemson University
2431		Tanning Facilities	5 09 00	Dept Health and Envir Control
2437		Respiratory Care Practitioners	5 09 00	LLR: Board Medical Examiners
2432		Terr and Cert of Sewerage & Water Util	5 09 00	Public Service Commission
2444		Medical Waste Incin, Def Gen Req	5 09 00	Dept Health and Envir Control
2451		Designation of Plant Pests	5 09 00	Clemson University
2471		Complete Chapter Revision	5 09 00	Employment Security Commission
2466		Permanent License	5 09 00	LLR: Board of Medical Examiners
2467		Fees	5 09 00	LLR: Manufactured Housing Board
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2454		Infectious Waste Management	5 09 00	Dept Health and Envir Control
2455		Classified Waters (Paris Mtn.)	5 09 00	Dept Health and Envir Control
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2470 R249	SR24-4	Settlement and Release; Attys Fees	5 10 00	Workers' Compensation Commission
2488		Exam, Classif, Licensure, Financial Sta	5 11 00	LLR: Contractors' Licensing Board
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2472		Relocation of Displaced Persons	5 11 00	Dept of Transportation
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2463		Examinations	5 15 00	LLR: Board of Chiropractic Examiners
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2452		Graduation Requirements	6 02 00	Board of Education
2481		School Transportation	6 02 00	Board of Education

(Subject to Sine Die Revision)

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REQUEST FOR AN ASSESSMENT REPORT (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2248	4 14 99	Primary and Substantial Portion (Video Game Machines)	Dept of Revenue

REQUEST TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2193	2 11 98	Video Poker; Def "Single Place" ...	Dept of Revenue
2433	2 23 00	Hearing Aids; Augmen Comm Devices	LLR: Speech-Language Path & Audio
2469	2 23 00	Volunteer Pharm Tech Free Med Clinics	LLR: Board of Pharmacy

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DOC NO.	DATE	SUBJECT	AGENCY
1984	1 14 99	Principal Evaluation	Board of Education
1981	1 14 99	Policy Development	Board of Education
2360	5 20 99	LIFE Scholarship	Higher Education
2457	4 19 00	Septic Tank Site Evaluation Fees	5 09 00 Dept Health and Envir Control

WITHDRAWN:

DOC NO.	DATE	SUBJECT	AGENCY
2372	6 22 99	Procedures for Contested Cases	Health and Envir Control

No. 2000-13

WHEREAS, Wallace Wood has resigned from the McCormick County Board of Education; and

WHEREAS, the undersigned is authorized to appoint a trustee to the County Board of Education in the event of a vacancy pursuant to Code of Laws of South Carolina (1976), as amended, Sections 1-3-220(2) and 59-15-10; and

WHEREAS, Dara Payton Harrison of 901 South Main Street, McCormick, South Carolina, 29835 is a fit and proper person to serve as a McCormick County Board of Education Trustee.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Dara Payton Harrison to the McCormick County Board of Education until the next general election and until her successor shall qualify.

GIVEN UNDER MY HAND AND THE GREAT SEAL
OF THE STATE OF SOUTH CAROLINA, THIS 17th
DAY OF MARCH, 2000.

Jim Hodges
GOVERNOR

4 NOTICES

DEPARTMENT OF CONSUMER AFFAIRS

ERRATA

28-62. Adjustment of Dollar Amounts, as amended

The first page of Emergency Regulation amending R. 28-62 published in the State Register, Volume 24, Issue 3(March 24, 2000) is corrected to fix minor typographical errors. Text for the other pages is correct.

7/1/00 through 6/30/02

Consumer Protection Code Section	Section	Change Dollar Amount	
		From	To
2.104(1)(e)	Consumer Credit Sale	65,000.00	67,500.00
2.106(1)(b)	Consumer Lease -	65,000.00	67,500.00
2.203(1)	Delinquency Charge-Sales	13.00	13.50
2.203(2)	Minimum Delinquency Charge-	5.20	5.40
2.407(1)	Security Interest-Sales	2,600.00 780.00	2,700.00 810.00
2.705(1)(a)	Delinquency Charge- Rental Purchase	7.20	7.60
2.705(1)(b)	Delinquency Charge- Rental Purchase	3.60	3.80
3.104(1)(d)	Consumer Loan	65,000.00	67,500.00
3.203(1)	Delinquency Charge-Loans	13.00	13.50
3.203(2)	Minimum Delinquency	5.20	5.40
3.510	Land as Security- Supervised Loans	2,600.00	2,700.00
3.511	Maximum Loan Term-	2,600.00 780.00	2,700.00 810.00
3.514	Attorney's Fees- Supervised Loans	2,600.00	2,700.00
5.103(2), (3), & (4)	Deficiency Judgement	3,900.00	4,050.00

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

ERRATA

Corrects State Register Document 1310

On August 9, 1990, the Board of Health and Environmental Control approved final amendments to Regulation 61.62.5, Standard 5.1, Lowest Achievable Emission Rate (ALAE \cong) Applicable to Volatile Organic Compounds. This amendment was published in the *State Register* on August 24, 1990, in Volume 14, Issue 9, as Document No. 1310. However, when the amendment appeared in the *State Register*, language in Section I.A.1. and I.A.2. of the regulation concerning the Apotential to emit \cong that was intended for deletion was inadvertently retained. The purpose of this errata is to correct this error so that Section I.A.1 and I.A.2. read as follows:

I.A.1. Any actual increase in the emissions of VOCs from a particular physical change or change in method of operation at a plant; and

I.A.2. Any other increases and decreases in the actual VOC emissions at the plant that occurred at the plant since July 1, 1979, and are otherwise creditable. An increase or decrease is creditable only if the Department has not relied on it in issuing a permit for the plant under this Standard, which permit is in effect when the increase from the particular change occurs.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

Public Notice #00-053-GP-N

April 28, 2000

The South Carolina Department of Health and Environmental Control (DHEC), Bureau of Air Quality, does hereby give notice of authorization being granted to the following sources who have requested coverage under General Conditional Major Operating Permit (GCMP-04) "Concrete Batch Plants." This general permit was previously opened for a 30 day public comment period on May 2, 1996, with final issuance on August 5, 1996. Pursuant to South Carolina Regulation 61-62.1, Section II G(7)(a)&(b), the Department may now grant coverage to those qualified sources seeking to operate under the terms and conditions of this general permit. The authorization of each facility's coverage shall be a final permit action for purposes of administrative review.

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5) and 48-1-110(a), the 1976 Code of Laws of South Carolina, as amended, and Regulation 61-62 "Air Pollution Control Regulations and Standards," these sources are hereby granted permission to discharge air contaminants into the ambient air. The Bureau of Air Quality authorizes the operation of these sources in accordance with the plans, specifications and other information submitted by each facility in the General Conditional Major Permit application. Facilities operating under this permit seek to limit their potential to emit to below the thresholds which define a major source by complying with the federally enforceable conditions contained in this permit. Permit coverage is subject to and conditioned upon the terms, limitations, standards, and schedules contained in or specified on said permit.

Interested persons may review the final general permit, materials submitted by the applicant, and any written comments received, during normal business hours, at the following location: SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina, 29201.

6 NOTICES

This notice is given pursuant to the requirements of South Carolina Regulation 61-62.1, Section II G(7)(c). Comments and questions concerning any of the following individual facility's coverage under this permit should be directed to: Mr. Carl W. Richardson, P.E., Director, Engineering Services Division, Bureau of Air Quality, SC DHEC, 2600 Bull Street, Columbia, South Carolina, 29201 at (803) 898-4123.

Richland County

Hardaway Concrete Company (Plant #1)
2001 Taylor Street
Columbia, South Carolina

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST
Public Notice #00-052-GP-N
April 28, 2000

The South Carolina Department of Health and Environmental Control (DHEC) does hereby give notice of authorization being granted to the following sources who have requested coverage under General Conditional Major Operating Permit (GCMP-03) "Hot Mix Asphalt Plants." This general permit was previously opened for a 30 day public comment period on May 2, 1996, with final issuance on August 5, 1996. Pursuant to South Carolina Regulation 61-62.1, Section II G(7)(a)&(b), the Department may now grant coverage to those qualified sources seeking to operate under the terms and conditions of this general permit. The authorization of each facility's coverage shall be a final permit action for purposes of administrative review.

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5) and 48-1-110(a), and the 1976 Code of Laws of South Carolina, as amended, Regulation 61-62, Air Pollution Control Regulations and Standards, these sources are hereby granted permission to discharge air contaminants into the ambient air. The Bureau of Air Quality authorizes the operation of these sources in accordance with the plans, specifications and other information submitted in the General Conditional Major Permit application. Facilities operating under this permit seek to limit their "potential to emit" to below the thresholds which define a major source by complying with the federally enforceable conditions contained in this permit. Permit coverage is subject to and conditioned upon the terms, limitations, standards, and schedules contained in or specified on said permit.

Interested persons may review the final general permit, materials submitted by the applicant, and any written comments received, during normal business hours at SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina, 29201.

This notice is given pursuant to the requirements of South Carolina Regulation 61-62.1, Section II G(7)(c). Comments and questions concerning any of the following individual facility's coverage under this permit should be directed to Mr. Carl W. Richardson, P.E., Director, Engineering Services Division, Bureau of Air Quality, SC DHEC, 2600 Bull Street, Columbia, South Carolina, 29201 at (803) 898-4123.

York County

York Asphalt Services, Inc.
150 Cemetary Street
McConnells, South Carolina

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 April 28, 2000, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 737-7200.

Affecting Charleston County

Construction for the addition of five (5) residential treatment center beds, for a total of 37 residential treatment , 10 substance abuse and 60 psychiatric beds.

Charter Charleston Adolescent Residential Treatment Center

Charleston, South Carolina

Project Cost: \$ 294,428

Renovation and modernization of inpatient operating rooms (Perioperative Services Department) on the existing 7th floor of the hospital.

Roper Hospital, Inc.

Charleston, South Carolina

Project Cost: \$ 2,637,724

Lease of a mobile Positron Emission Tomography (PET) Scanner.

Trident Medical Center

Charleston, South Carolina

Project Cost: \$ 921,000

Affecting Florence County

Renovations of the Emergency Department with construction not to begin until April 1, 2001.

McLeod Regional Medical Center

Florence, South Carolina

Project Cost: \$ 2,871,175

Affecting Georgetown County

Major expansion and renovation of the hospital.

Georgetown Memorial Hospital

Georgetown, South Carolina

Project Cost: \$ 10,383,577

Affecting Greenville County

Purchase of a Positron Emission Tomography (PET) Scanner and renovation of space in a medical office building on the campus of St. Francis Hospital.

The Carolinas Clinical PET Institute

Greenville, South Carolina

Project Cost: \$ 2,313,461

Affecting Horry County

Construction of an addition to the North Myrtle Beach Day Hospital, a/k/a Seacoast Medical Center for the addition of a GE Open MRI.

8 NOTICES

Seacoast Medical Center
Little River, South Carolina
Project Cost: \$ 1,682,625

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 April 28, 2000. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 737-7200.

Affecting Charleston County

Relocation of the Magill Laser Center from the Storm Eye Institute to the API Office Building on Mt. Pleasant.
MUSC Medical Center
Charleston, South Carolina
Project Cost: \$ 2,659,728

Lease of a mobile Positron Emission Tomography (PET) Scanner.
Trident Medical Center
Charleston, South Carolina
Project Cost: \$ 921,000

Affecting Georgetown County

Major expansion and renovation of the hospital.
Georgetown Memorial Hospital
Georgetown, South Carolina
Project Cost: \$ 10,383,577

Affecting Greenville County

Phase V Expansion project (new construction) at Greenville Memorial Hospital (GMH) to include a six floor addition to the front of GMH and the addition of four floors above the operating rooms on the second floor of GMH; expansion of clinical areas at GMH to include the Heart Institute, Women's Services, Children's Services and the Emergency Trauma Center; addition of one (1) comprehensive cardiac catheterization laboratory and one (1) electrophysiology (EP) laboratory for a total of seven (7) cardiac catheterization laboratories and two (2) dedicated EP labs at GMH; transfer of 13 general acute care beds from Hillcrest Hospital (HH) to GMH resulting in total licensed bed capacities of 43 general acute care beds at HH and 641 acute care beds in private rooms, 53 rehabilitation beds, 72 psychiatric beds, and 48 hospital based nursing home beds at Greenville Memorial Medical Center.
Greenville Hospital System
Greenville, South Carolina
Project Cost: \$59,150,000

Purchase of a Positron Emission Tomography (PET) Scanner and renovation of space in a medical office building on the campus of St. Francis Hospital
The Carolinas Clinical PET Institute
Greenville, South Carolina
Project Cost: \$ 2,313,461

Affecting Horry County

Construction for the addition of 44 nursing home beds, of which 25 will participate in the Medicaid (Title XIX) program for a total of 132 nursing home beds.

Loris Extended Care Center

Loris, South Carolina

Project Cost: \$ 4,340, 089

Construction of an addition to the North Myrtle Beach Day Hospital a/k/a Seacoast Medical Center for the addition of a GE Open MRI.

Seacoast Medical Center

Little River, South Carolina

Project Cost: \$ 1,682,125

Construction of an ambulatory surgery center with two (2) operating rooms restricted to endoscopy only.

Strand Gastrointestinal Endoscopy Center

Myrtle Beach, South Carolina

Project Cost: \$1,508,327

Affecting Richland County

Replacement of the existing fixed 1.0 MRI with a GE 1.5 Telsa MRI. The new MRI is to be located in the same location as the existing unit, in the basement of the Tower Building PBMC.

Palmetto Baptist Medical Center

Columbia, South Carolina

Project Cost: \$ 2,280,599

Affecting Richland County

Relocation and expansion of the South Carolina Comprehensive Breast Center within Richland Medical Park.

Palmetto Richland Memorial Hospital

Columbia, South Carolina

Project: \$ 2,233,589

Affecting Sumter County

Construction of a new 9,000 square foot facility to house outpatient imaging services to include an open MRI, CT Scanner, Ultrasound and X-Ray. Registration and lab support services will also be provided.

Tuomey Outpatient Imaging Center

Sumter, South Carolina

Project Cost: \$ 7,082,500

10 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF CANCELLATION AND RESCHEDULING OF PUBLIC HEARING

Document No. 2506
Proposed Amendment of R.61-62.63
National Emission Standards for Hazardous Air Pollutants (NESHAP)

The Public Hearing before the Department of Health and Environmental Control Board concerning the proposed revision of Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*, originally scheduled for April 13, 2000, has been rescheduled to May 11, 2000.

The public hearing will be held at the regularly-scheduled Board meeting on May 11, 2000, in the Board Room of the Commissioner=s Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull St., Columbia, S.C. The board meeting commences at 10:00 a.m. at which time the board will consider items on its agenda in the order presented. The order of presentation for public hearing on May 11, 2000, will be noticed in the board=s agenda to be published by the Department 10 days in advance of the meeting. Interested persons are invited to make oral or written comments on the proposed regulation at the public hearing. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentations for the record. Any comments made at the public hearing will be given consideration in formulating the final version of the regulation. Questions concerning this notice should be addressed to Heather S. Preston, Bureau of Air Quality at (803) 898-4287.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act. Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and individuals listed below, please submit your comments in writing, no later than May 26, 2000 to:

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

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

Class I
Canal Environmental Services

Class II
Canal Environmental Services

BOARD OF FINANCIAL INSTITUTIONS

CHAPTER 15

Statutory Authority: 1976 Code Section 34-29-140(j); 37-1-109

Notice of Drafting:

The State Board of Financial Institutions announces changes to Regulation 15-63 regarding Adjustment of Dollar Amounts. Interested persons should submit their views in writing to C. Dean Bratton, Director, Consumer Finance Division, State Board of Financial Institutions, P.O. Box 11905, Columbia, S.C. 29211. To be considered, all comments must be received by 5:00, May 30, 2000.

Synopsis:

Section 34-29-140(j), as amended, of the Code of South Carolina provides that certain dollar amounts in Section 34-29-140(a)(2) and (a)(3) be adjusted in every even numbered year based on the Consumer Price Index. These adjustments are to be made in the manner as provided by Section 37-1-109, except that the index for December, 1991, is the Reference Base Index for purposes of adjustments. The Board must announce those changes by regulation and shall change by 10% on July 1, 2000.

LAW ENFORCEMENT DIVISION

CHAPTER 73

Statutory Authority: 1976 Code Section 23-3-130

Notice of Drafting:

The South Carolina Law Enforcement Division is considering revising Regulation 73 concerning the Criminal Justice Information System. Interested persons should submit their views in writing to Major Mark Huguley, SLED Criminal Justice Information Services, Post Office Box 21398, Columbia, South Carolina, 29221-1398. To be considered, comments must be received no later than 5:00 p.m. on May 11, 2000, the close of the drafting comment period.

Synopsis:

The South Carolina Law Enforcement Division is amending current regulations concerning the Criminal Justice Information System which have not been revised since 1983. The Division is adding proper definitions of non-conviction data, updating the organizational description for the crime information component of SLED, making record dissemination rules consistent with statutes, and correcting the address given for the Criminal Justice Information System division of the Federal Bureau of Investigation. Promulgation of these regulations is mandated by Section 23-3-130, 1976 Code of Laws, as amended.

12 DRAFTING

DEPARTMENT OF REVENUE

CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-173 to clarify that the term “machine” as defined in Section 12-36-2120(17) includes machines, their parts and attachments, when they are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of pollution, including noise pollution, that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property for sale. Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Administrative Division, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on Tuesday, May 30th, 2000.

Synopsis:

Presently, this regulation only references machines necessary for the prevention or abatement of air and water pollution. This amendment would allow the exemption from the tax for machines, their parts and attachments, when they are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of any pollution, including noise pollution, that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property for sale.

Document No. 2525
DEPARTMENT OF CONSUMER AFFAIRS
 CHAPTER 28
 Statutory Authority: 1976 Code Section 37-1-109 and
 37-6-104 (1) (e)

28-62. DOLLAR AMOUNT CHANGES.

Preamble:

The Department proposes to amend Regulation 28-62. The proposed amendment will adjust certain dollar amounts in the Consumer Protection Code which change on July 1 of every even numbered year based on the changes in the Consumer Price Index for December of the prior year. The dollar amounts will increase 10% with the exception of Sections 37-2-203 (2) and 37-3-203 (2) which have a self-executing formula of 40%. The designated dollar amount figures are Sections 37-2-104(1)(e), 37-2-106(1)(b), 37-2-203(1), 37-2-407(1), 37-2-705(1)(a), 37-2-705(1)(b), 37-3-510, 37-3-511, 37-3-514, 37-5-102(2), (3) and (4). The Department is required to announce these changes by Regulation.

Notice of Drafting for the proposed amendment was published in the State Register on February 25, 2000. Comments were solicited for consideration in drafting the proposed amendment.

Notice of Public Hearing and Opportunity for Public Comment:

Should a public hearing be requested, such a hearing will be held on June 13, 2000, at 3:00 p.m. in the Conference Room, Third Floor, 3600 Forest Drive, Columbia, S.C. 29205. Written comments may be directed to Mr. David L. Allen, Staff Attorney, Department of Consumer Affairs, P.O. Box 5757, Columbia, S.C. 29250-5757 by May 30, 2000.

Preliminary Fiscal Impact Statement:

The Department does not anticipate any fiscal impact with the implementation of this Regulation.

Statement of Need and Reasonableness:

Description of Regulation: Adjustment of Dollar Amounts.

Purpose: The South Carolina Consumer Protection Code, Section 37-1-109 provides that the designated dollar amounts will change on July 1 of each even numbered year if the percentage of change, calculated to the nearest whole percentage point is 10% or more. Based on the change in the Consumer Price Index for December 1999 the Department calculated a 10% change for the designated dollar amount figures in the Consumer Protection Code. Sections 37-2-203 (2) and 37-3-203(2) have a self-executing formula of 40% tied to Sections 37-2-203(1) and 37-3-203(1) respectively. As a result, all the figures subject to the price index under Section 37-1-109 increased by 10%. The Regulation merely announces the changes calculated pursuant to a formula based on the Consumer Price Index.

Legal Authority: Department of Consumer Affairs Regulation 28-62, as amended, Code of Laws of South Carolina 1976.

Plan for Implementation: Administrative.

Determination of Need and Reasonableness Based on all Factors Herein and Expected Benefits:

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The Regulation merely announces the changes in the designated dollar amounts in the Code for users of the Consumer Protection Code.

Determination of Costs and Benefits: No additional costs will be incurred.

Uncertainties of Estimates: None

Detrimental Effect in the Environment and Public Health if the Regulation is not Implemented: None

Text:

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

Document No. 2526

DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF EXAMINERS FOR THE LICENSURE OF PROFESSIONAL COUNSELORS, MARRIAGE
AND FAMILY THERAPISTS, AND PSYCHO-EDUCATIONAL SPECIALISTS
CHAPTER 36

Statutory Authority: 1976 Code Section 40-75-05, et seq.

Preamble:

The Board of Examiners for the Licensure of Professional Counselors, Marriage and Family Therapists, and Psycho-educational Specialists is drafting regulations to be consistent with recent amendments to the practice act. During the original drafting process begun last year, public comments were received along with a detailed report from the Administrative Law Judge Division, dated September 3, 1999. These regulations incorporate the recommendations of the Administrative Law Judge Division and significant public comments. The proposed regulations will provide updated and increased educational standards for licensure as a professional counselor intern or marriage and family therapy intern. The regulations will also provide regulation for two previously unlicensed groups, psycho-educational specialists and alcohol and drug addictions counselors, who will be licensed as professional counselors or professional counselor interns.

Section by Section Discussion:

The Board of Examiners for the Licensure of Professional Counselors, Marriage and Family Therapists, and Psycho-educational Specialists is repealing current regulations in their entirety. The following is a section by section discussion of the new requirements:

Article 1

Definitions.

Regulation 36-01.

Definitions found in Section 40-45-20 apply to this chapter.

- (1) Defines "supervision."
- (2) Defines "group supervision."
- (3) Defines "individual supervision."
- (4) Defines "internship."
- (5) Defines "continuing education."
- (6) Defines "contact hours."
- (7) Defines "impairment."
- (8) Defines "relapse."

- (9) Defines “approved treatment provider.”
- (10) Defines “sobriety.”
- (11) Defines “qualified licensed mental health practitioner.”
- (12) Defines “DSM.”
- (13) Defines “serious problems.”

Article 2.

Officers of Board; Meetings.

Regulation 36-02.

Establishes the officers of the Board.

Regulation 36-03.

- (1) Sets the number of meetings per year and the method by which meetings may be called.
- (2) Sets the number of members that must be present to constitute a quorum.
- (3) Addresses Board attendance.

Regulation 36-04.

Establishes the requirements that must be met for initial licensure as a professional counselor intern.

Regulation 36-04.1.

Establishes specific training for interns to assess and treat serious problems as categorized in standard diagnostic nomenclature.

Regulation 36-05.

Establishes the requirements that must be met for initial licensure as a professional counselor.

Regulation 36-05.1.

Establishes specific training for professional counselors to assess and treat serious problems as categorized in standard diagnostic nomenclature.

Regulation 36-06.

Establishes the requirements that must be met for initial licensure as a professional counselor supervisor.

Regulation 36-07.

Establishes the requirements that must be met for initial licensure as a marriage and family therapy intern.

Regulation 36-08.

Establishes the requirements that must be met for initial licensure as a marriage and family therapist.

Regulation 36-09.

Establishes the requirements that must be met for initial licensure as a marriage and family therapy supervisor.

Regulation 36-10.

Establishes the requirements that must be met for initial licensure as a psycho-educational specialist.

Regulation 36-11.

Establishes the requirements that must be met for licensure by endorsement.

Regulation 36-12.

Establishes the requirements that must be met for reactivation of an expired license.

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Regulation 36-13.

Establishes the continuing education requirements for licensed professional counselors and marriage and family therapists.

Regulation 36-14.

Establishes the continuing education requirements for licensed psycho-educational specialists.

Regulation 36-15.

Establishes fees.

Regulation 36-16.

Establishes the method by which impaired practitioners may be identified.

Regulation 36-17.

Establishes the method by which impaired practitioners may receive treatment.

Regulation 36-18.

Establishes the method by which the Board may approve impaired practitioner treatment programs.

Regulation 36-19.

Establishes a code of ethics for professional counselors.

Regulation 36-20.

Establishes a code of ethics for marriage and family therapists.

Regulation 36-21.

Establishes a code of ethics for psycho-educational specialists.

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, as amended, such hearing will be conducted at the Administrative Law Judge Division at 10:00 a.m. on June 13, 2000. Written comments may be directed to Marjorie Montgomery, Administrator, Board for Examiners for the Licensure of Professional Counselors, Marriage and Family Therapists and Psycho-educational Specialists, Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m., Monday, May 29, 2000.

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 ensure that the provisions of the recently-enacted practice act are carried out by promulgation of regulations establishing guidelines for the licensure of psycho-educational specialists, providing for continuing education requirements for professional counselors, marriage and family therapists and psycho-educational specialists, establishing an impaired practitioners program, establishing fees, and establishing a code of ethics for each licensure groups.

Legal Authority: Statutory Authority: 1976 Code Title 40, Chapter 75, Sections 05, et seq.

Plan for Implementation: Administratively, the Board will see that these practices are implemented by informing the licensees through written communications and newsletters. The Board will then see that the regulations are enforced through audits.

DETERMINATION OF NEED AND REASONABLENESS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These regulations need revision in order to comply with the new statutory requirements and procedures.

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: These regulations will have no effect on the environment and public health of this State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: These regulations will have no detrimental effect on the environment and public health of this State if the regulations are not implemented in this State.

Text:

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

Document No. 2522

PUBLIC SERVICE COMMISSION

CHAPTER 103

Statutory Authority: 1976 Code Sections 58-3-140, as amended, 58-27-140, and 58-27-150

103-302(4) Definitions

Preamble:

The Public Service Commission is considering amending 26 S.C. Code Ann. Regs. 103-302(4) (1976). The proposed amendments would exempt any person or corporation providing electric service to their residents, employees or tenants, which charges their residents, employees or tenants no more than the actual cost of the electricity received from the supplier from the definition of an electrical utility. In addition, the proposed amendment modifies the present exemption language from those entities furnishing electricity only to their resident employees or tenants, to those entities furnishing electricity only to their residents, employees or tenants.

A Notice of Drafting was published in Volume 24, Issue No. 1 of the *State Register* published January 28, 2000.

Section-by-Section Discussion

103-302(4) The existing text of Regulation 103-302(4) is being amended to clarify the exclusion of certain persons and corporations from the definition of an electrical utility.

Notice of Public Hearing and Opportunity for Public Comment:

Individuals interested in commenting on the proposed regulation may do so by submitting comments in writing to Mr. Gary E. Walsh, Executive Director, Public Service Commission of South Carolina, P.O. Drawer 11649,

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Columbia, South Carolina 29211. To be considered, comments must be received no later than 4:45 p.m. on June 7, 2000, the close of the drafting comment period. Please refer to Docket No. 1999-505-E in written comments forwarded to the Commission. A public hearing on the proposed amendments to 26 S.C. Code Ann. Regs. 103-302(4) (1976) will be held on June 15, 2000, at 11:00 a.m. before the Commission in the Commission's Hearing Room at 101 Executive Center Drive, Saluda Building, Columbia, South Carolina.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 103-302(4), DEFINITION OF AN ELECTRICAL UTILITY

Purpose: The purpose of the amendments to 26 S.C. Code Ann. Regs. 103-302(4) is to exclude certain persons and corporations who provide electric service and charge no more than the actual cost of the electricity received from the supplier or who do not resell the current, from the definition of an electrical utility.

Legal Authority: The legal authority for amending the proposed regulation regarding the definition of an electrical utility is Sections 58-3-140, as amended, 58-27-140, and 58-27-150 of the 1976 S.C. Code of Laws.

Plan for Implementation: The amended regulation will take effect upon approval by the General Assembly and publication in the *State Register*. After the regulation takes effect, certain types of persons and corporations will be exempt from the definition of an electrical utility.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The proposed amendments to 26 S.C. Code Ann. Regs. 103-302(4) (1976) would eliminate the need for the Public Service Commission to regulate persons and corporations who are merely passing through the cost and not reselling electricity to himself or itself, their residents, employees or tenants. The promulgation of the amendments to 26 S.C. Code Ann. Regs. 103-302(4) (1976) will allow the Public Service Commission to devote more time to resolving complaints that arise concerning an entity that falls within the scope of the definition of an electrical utility. In addition, the enactment of the proposed amendments to the regulation will more narrowly define an electrical utility.

DETERMINATION OF COSTS AND BENEFITS: Although the State will not incur any additional costs upon the promulgation of the amendments to 26 S.C. Code Ann. Regs. 103-302(4) (1976), the proposed amendments expound and improve the current definition of an electrical utility.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The promulgation of the amendments to this regulation will not have an effect on the environment or public health. However, the proposed amendments will provide a more comprehensive definition of an electrical utility.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no detrimental effects on the environment and public health if the proposed amendments to 26 S.C. Code Ann. Regs. 103-302(4) (1976) are not implemented.

Text:

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

Document No. 2523
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulation 117-174.257

Preamble:

The purpose of this proposal is to make the regulation consistent with the sales and use tax statute. Sales of hearing aids are now exempt per Code Section 12-36-2120(38), but the regulation says they are not. In addition, this proposal makes the regulation consistent with the language in Code Section 12-36-2120(28). The regulation was last amended effective 7/1/81. Since that date, Section 12-36-2120(28) has changed substantially. This proposal also removes language pertaining to the definitions for “medicine” and “prosthetic devices,” without changing the definition.

Notice of Public Hearing:

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Judge Division in the Edgar Brown Building (Second Floor) on the Capitol Complex in Columbia, South Carolina (1205 Pendleton Street) for June 15, 2000 at 9:30am if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the department to make Regulation 117-174.257 consistent with Code Sections 12-36-2120(28) and 12-36-2120(38). The department will be asking the Administrative Law Judge Division, in accordance with S.C. Code Ann. ‘ ‘ 1-23-111 (Supp. 1996), to issue a report that the proposed regulation is needed and reasonable.

Comments:

All comments concerning this proposal should be mailed to the following address by May 30, 2000:
S.C. Department of Revenue
Administrative Division - Mr. Meredith Cleland
P.O. Box 125
Columbia, South Carolina 29214

Preliminary Fiscal Impact Statement:

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

Summary of the Preliminary Assessment Report:

The purpose of this proposal is to make Regulation 117-174.257 consistent with Code Sections 12-36-2120(28) and 12-36-2120(38). The Department of Revenue will implement this proposal in the same manner as it

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implements all other regulations. Any cost involved in this regulation would be negligible. Costs, in fact, should decline as less taxpayer confusion will lead to more voluntary compliance with the tax laws.

This proposed amendment is needed to reduce confusion caused by the differences in language between Regulation 117-174.257 and Code Sections 12-36-2120(28) and 12-36-2120(38). The proposal is reasonable in that it conforms the regulation to the statute.

Preliminary Assessment Report:

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

1. The purpose of this proposal is to make the language in Regulation 117-174.257 consistent with the language in Code Sections 12-36-2120(28) and 12-36-2120(38). The Department of Revenue will implement this proposal in the same manner as it implements all other regulations.
2. This proposed amendment is needed to reduce confusion caused by the differences in language between Regulation 117-174.257 and Code Sections 12-36-2120(28) and 12-36-2120(38). The proposal is reasonable in that it conforms the regulation to the statute.
3. This proposal will benefit the taxpayers of this state in that it will reduce confusion and thereby enhance tax compliance. Any cost involved in this proposal will be negligible.

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

9. There is very little, if any, uncertainty associated with estimating the benefits of this proposal. All individuals would be similarly treated by these provisions.
10. The proposal would not have any effect on the environment and public health.
11. If the proposal is approved, there would not be a detrimental effect on the environment and public health.

Text:

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

Filed: April 13, 2000, 4:20 pm

Document No. 2524
BOARD OF FINANCIAL INSTITUTIONS
CHAPTER 15

Statutory Authority: 1976 Code Section 34-29-140(j); 37-1-109

15-63 Adjustment of Dollar Amounts, as amended

Emergency Situation:

Section 34-29-140(j) provides that the Chairman of the Board of Financial Institutions shall announce by regulation the changes in specified dollar amounts in Section 34-29-140(a)(2) and Section 34-29-140(a) (3) in the manner provided by Section 37-1-109. Subsection (4)(a) of Section 37-1-109 requires that the changes in dollar amounts be announced by regulation on or before April 30th of each year in which dollar amounts change. Subsection (2) of Section 37-1-109 requires that the changes in dollar amounts be made effective on July 1st of each even numbered year. A Notice of Drafting period for a proposed amendment to Regulation 15-63 was published in Volume 23, Issue 4 of the State Register on April 28, 2000. The announcement of rates must be made sooner than the process for promulgation of permanent regulations will allow under the Administrative Procedures Act.

Sections 34-29-140(j) and 37-1-109, as written, clearly reflect the intention of the General Assembly that consumers and the consumer credit industry be given advance notice of changes to be made in dollar amounts in Sections 34-29-140(a)(2) and (a)(3). Therefore, the Chairman finds, pursuant to S.C. Code Ann. Section 1-23-130(1976, as amended) that imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation prior to compliance with the procedures prescribed in the Administrative Procedures Act, S.C. Code Ann. Section 1-23-10 et seq.

Text:

15-63. Dollar Amount Changes

The dollar amounts in the Section 34-29-140(a)(2) and (a)(3) listed below shall change by increasing 10%. These sections shall change as indicated on July 1, 2000 in accordance with Sections 34-29-140(j) and 37-1-109.

7/1/00 through 6/30/02

Consumer Finance Law Code Section	Subject	Change Dollar Amount	
		From	To
34-29-140 (a)(2)	Loan Bracket	2,200.00	2,400.00
34-29-140 (a)(2)	Loan Bracket	1,100.00	1,200.00
34-29-140 (a)(2)	Loan Bracket	660.00	720.00
34-29-140 (a)(3)	Loan Bracket	2,200.00	2,400.00

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Resubmitted February 16, 2000

Document No. 2424
DEPARTMENT OF EDUCATION
Chapter 43

Statutory Authority: 1976 Code Sections 59-5-60 (3 & 6) and 59-39-100

43-240. Summer Programs

Synopsis: The South Carolina Education Accountability Act passed by the General Assembly and signed into law by the Governor on June 10, 1998, defines additional services the school and district will provide in order to ensure student success at the next grade level. To do so, the State Board of Education proposed that R43-240 be amended to provide for greater specificity regarding the minimum amount of instructional hours required to meet the needs of students.

Instructions: R43-240, Summer Programs, is amended and should read as follows:

Text:

Instruction offered in summer programs must meet the same rigor and standards required during the regular school year. Each summer school with 100 or more students shall employ a certified principal to direct the program. The final accreditation status of the summer program will be reflected in the overall district rating for the next year.

I. Qualifications of Teachers, Kindergarten; Grades 1-12:

The qualifications of each teacher shall be the same as those for the regular term.

II. Kindergarten; Grades 1-8:

Organization and Administration:

1. Pupil/teacher ratio shall not exceed 25:1 in each classroom for grades K-6, or 30:1 in each classroom for grades 7-8.

2. For students in grades 3-8, a summer program designed for academic assistance under the Educational Accountability Act of 1998 (EAA) will be no less than 30 instructional hours. For students in grades K, 1, and 2, not on academic plans established by EAA, the districts may determine the length of the school day and the number of days scheduled.

3. Summer schools operated for students who are earning high school units of credit must meet all the requirements established for grades 9-12.

III. Secondary Program Administration: Grades 9-12; Courses for High School Credit

Secondary Schools

1. Pupil/teacher ratio shall not exceed 30:1 in each classroom.

2. All students taking a course for one unit of credit must receive at least 120 hours of instruction in that subject area.

3. No teacher shall be assigned to teach more than one subject or one level of the same subject during one period for credit. (Exception: Two consecutive levels of coursework in the same subject area may be taught during one period if all students are repeating a course and the combined membership does not exceed 15 students.)

4. No student may earn more than two units of credit during one summer school session.

5.* No student shall be allowed to apply more than a total of six units earned in summer school, and/or through approved correspondence courses, and/or adult education programs to the units required for a state high school diploma.

6.* There is no limit on the number of credits a student may earn in a summer program that is operated on a quarterly basis as part of a twelve-month school program. These students may not apply more than two units earned through correspondence courses and/or adult education programs to the units required for a state high school diploma.

*Students properly in membership before the beginning of the 1997-98 school year must earn 20 units of credit as prescribed by the State Board of Education. Beginning with the ninth grade class of 1997-98, and thereafter, students properly in membership must earn 24 units of credit as prescribed by the State Board of Education.

Fiscal Impact Statement:

Fiscal impact will vary from district to district depending upon program needs. In FY 00 there will be \$10 million in EAA with a Proviso for districts to also use the \$10 million for the remainder of the FY 99 school year.

Document No. 2428
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Section 59-103-195

62-100. Tasting of Alcoholic Beverages by Students Under Twenty-One Years of Age in Culinary Arts Course in an Accredited College or University.

Synopsis:

The 1998 General Assembly passed House Bill 3603 which stipulates that a college or university accredited by a recognized accrediting agency may allow students who are eighteen years of age or older and enrolled in a culinary course which the State Commission on Higher Education has approved to taste, but not consume or imbibe, any beer, ale, porter, wine, alcoholic liquor, or other similar malt or fermented beverage as part of the required curriculum. The tasting must be only for instructional purposes during classes that are part of the curriculum. The beverage must all times remain in the possession and control of an authorized instructor of the college or university who must be twenty-one years of age or older. The instructor may not offer alcoholic beverages for consumption or imbibition.

Instructions: Add new R. 62-100 Tasting of Alcoholic Beverages by Students Under Twenty-One Years of Age in Culinary Arts Course in an Accredited College or University, to Chapter 62.

Text:

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62-100. Tasting of Alcoholic Beverages by Students Under Twenty-One Years of Age in Culinary Arts Course in an Accredited College or University.

A. A college or university accredited by a recognized accrediting agency may allow students who are eighteen years of age or older and enrolled in a culinary course which the State Commission on Higher Education has approved to taste, but not consume or imbibe, any beer, ale, porter, wine, alcoholic liquor, or other similar malt or fermented beverage as part of the required curriculum. The tasting must be only for instructional purposes during classes that are part of the curriculum. The beverage must at all times remain in the possession and control of an authorized instructor of the college or university who must be twenty-one years of age or older. The instructor may not offer alcoholic beverages for consumption or imbibition.

B. It is the institution's responsibility to establish safeguards and policies to assure compliance with the parameters prescribed by law, to assure that instructors are thoroughly familiar with the parameters allowing the tasting, and to monitor the courses. The institution's policies must include a method by which each student must expectorate rather than swallow so as not to become intoxicated. The institution must require that each student sign a hold harmless statement acknowledging that he or she is willingly participating and holding the institution and the State harmless in case of health or other consequences. The institution must allow each student a choice to participate or not for any reason without effect upon the student's grade.

Fiscal Impact Statement:

The Commission on Higher Education estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be approximately \$0.

Document No. 2464
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF ELEVATOR AND AMUSEMENT RIDE SAFETY
CHAPTER 71
Statutory Authority: 1976 Code Section 41-16-40, et seq.

Synopsis:

This regulation amendment revises existing regulations concerning new and existing facilities. The changes add a new regulation to recognize national safety codes and delete unnecessary state specific requirements for the installation of platform and stairway chairlifts, sump pumps in pits, and installation and use of flexible electrical conduit.

Instructions: Amend current regulations, by amending Regulation 71-5100.1., and by adding Regulation 71-5100.4.D. as they appear in the text below. Further amend current regulations by deleting Regulation 71-5200.4.J. in its entirety and relettering the remainder of section.

Text:

71-5100.1. All facilities installed after July 1, 1986, shall comply with the officially adopted editions of the ASME A17.1 Elevator Code and all supplements thereto, at the time the permit is issued. In the alternative, manlifts may comply with the 1992 editions of the ANSI A90.1 Safety Standards for Manlifts and all supplements thereto. In the alternative platform and stairway chairlifts may comply with ANSI A18.1 and all supplements

thereto. Compliance with any later edition of the required safety codes shall be accepted by the director as compliance with the section.

71-5100.4.D. A17.1, Rule 106.1(b)(3) is repealed. Sump pumps or drains are not required in elevator pits by these regulations. Where indicated by design consideration, sump pumps or drains shall comply with ANSI A17.1, Rule 106.1(b)(3).

Amend 71-5200.4. by deleting subsection J which currently reads:

71-5200.4.J. Flexible electrical conduit in lengths in excess of twenty (20) inches shall not be added in machine rooms or machinery spaces. P.V.C. conduit shall not be added in facilities or electrical feeders supplying facilities except for concrete stub-ups not to exceed six(6) inches. Any existing P.V.C. or flexible conduit shall be supported or anchored to prevent accidental damage. Any damaged conduit shall be replaced.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any political subdivision.

DOCUMENT NO. 2489
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF FUNERAL SERVICE
 CHAPTER 57
 Statutory Authority: 1976 Code Section 40-19-05

Synopsis:

The Board of Funeral Service is amending Regulations 57-04, 57-12, & 57-13. The changes will amend existing regulations to make minor corrections, clarify that fees cover an annual licensing period, and adjust requirements under the Code of Ethics.

Instructions: Amend current regulations, by amending Regulations 57-04, 57-12, & 57-13 as it appears in the text below.

Text:

57-01. No changes.

57-02. No changes.

57-03. No changes.

57-04. General Licensing Provisions for Embalmers.

An applicant for initial licensure as an embalmer must:

- (A) be at least eighteen (18) years of age; and
- (B) submit an application on forms approved by the Board, along with the required fee; and
- (C) submit evidence of successful completion of a course of study in an embalming college accredited by the American Board of Funeral Service Education and approved by the Board; and
- (D) submit evidence of a passing score of at least seventy-five (75) on an examination approved by the Board; and
- (E) submit evidence of successful completion of a minimum of twenty-four (24) months of full time service as an apprentice under the direct supervision of a licensed embalmer approved by the Board.

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57-05. No changes.

57-06. No changes.

57-07. No changes.

57-08. No changes.

57-09. No changes.

57-10. No changes.

57-11. No changes.

57-12. Fees.

(A) Fees as follow:

(2) Annual License renewal

(a) Funeral Director Apprentice	50.00
(b) Embalmer Apprentice	50.00
(c) Embalmer	50.00
(d) Funeral Director	50.00
(e) Dual License	60.00
(f) Funeral Establishment	60.00
(g) Student Permit	25.00

(3) Late Renewal Penalty (1-6 months) 60.00

(4) Reactivation (Revival) (6 months or more) 60.00 + renewal fee for each year
license was expired

(5) Examination Fee

(a) National State Examination	actual fee charged by examination provider (One part)
(b) National State Examination	actual fee charged by examination provider (Two parts)
(c) State Statutes and Regulations Exam	25.00

(B) All fees are nonrefundable.

57-13. Code of Ethics.

(A) Responsibilities to the Family.

(1) A funeral director shall, where possible, fully inform the family of the deceased concerning the time, the place, and details of the funeral service.

(2) A funeral director shall consider the financial limitations of the family of the deceased when counseling the family in the selection of services and furnishings.

(3) A funeral director shall explain to the family of the deceased costs of the services and the merchandise and disclose the range of prices for funeral goods and services available.

(4) A funeral director shall review with the family of the deceased all death benefits and burial allowances of which he is aware.

(5) A funeral director shall provide a statement of goods and services for the family to approve showing the price of the services and merchandise that was selected, the price of each of the supplemental items of the service, and the amount involved for each of the items for which the funeral director will advance monies as an accommodation to the family.

(6) A funeral director shall not make any misrepresentation concerning any aspect of the services rendered or the funeral furnishings or disposition alternatives.

(B) Confidentiality.

(1) A funeral director shall not disclose the cause of death of the deceased, expenditures for the funeral, the cost of the service, the source of funds or other information of a personal nature except with the express permission of the immediate family, or their authorized representatives.

(C) Property.

(1) A funeral director shall dispose of the personal effects of the deceased in accordance with the wishes of the family.

(D) Organ Donation.

(1) A funeral director shall support the wishes of families who authorize organ or body donations, if the body is needed and medically acceptable.

(E) Responsibilities to the Clergy.

(1) A funeral director shall respect the customs and mourning habits of all religious creeds and denominations and shall adjust services to conform with the rituals and the beliefs of the family of the deceased.

(2) A funeral director shall honor the wishes and desires of the clergy in conducting the service whenever possible, except that the wishes of the clergy person shall be subservient to those of the family except when dogma is involved.

(3) A funeral director shall abide by the rules and regulations of the church when the funeral service is held in a church.

(4) A funeral director shall make appropriate referrals when religious or pastoral counseling is requested.

(F) Responsibilities to Medical and Hospital Personnel.

(1) A funeral director or embalmer shall promote public health by conforming with health laws and regulations.

(2) A funeral director or embalmer shall not discourage autopsy of the deceased unless instructed to do so by the immediate family.

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

Document No. 2429

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
CHAPTER 73**

Statutory Authority: 1976 Code Sections 50-21-114, 55-1-100, 56-1-286,
56-5-2950, and 56-5-2953

ARTICLE 1 BREATHALYZER TESTS

Synopsis:

The South Carolina Law Enforcement Division has proposed amendments to the regulations contained within Article 1 of Chapter 73. The purpose for the changes is to update Article 1 due to modifications of Sections 56-1-10 and 56-5-2950, Code of Laws of South Carolina, 1976, as amended. In addition, new regulations are written for breath site videotaping. These regulations are necessary due to the passage of Sections 56-1-286 and 56-5-2953, Code of Laws of South Carolina, 1976, as amended.

Instructions:

Statutory Authority The statutory authority has been amended by adding Sections 50-21-114, 55-1-100, 56-1-286, and 56-5-2953.

Article 1. The title of Article 1 has been changed from "BREATHALYZER TESTS" to "IMPLIED CONSENT TESTS".

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- 73-1. The title of regulation (73-1) remains the same. Section (73-1A) remains the same. Sections (73-1B), (73-1C), (73-1D), and (73-1E) have been amended. New section (73-1F) has been added.
- 73-2. The title of regulation (73-2) remains the same. Sections (73-2A) and (73-2B) have been amended. Sections (73-2C), (73-2D), and (73-2E) have been added.
- 73-2.1. The regulation (73-2.1) remains the same.
- 73-3. The title of regulation (73-3) has been amended. Sections (73-3A), (73-3C), (73-3D), and (73-3E) have been amended. Section (73-3B) remains the same.
- 73-4. The regulation (73-4) has been deleted. 73-5. New regulation (73-5) has been added. Sections (73-5A), (73-5B), (73-5C), (73-5D), and (73-5E) have been added.

TEXT:

ARTICLE 1

IMPLIED CONSENT TESTS

Reg.

- 73-1. Definitions.
- 73-2. Methods of Making Chemical Analyses.
- 73-2.1. Suggested Procedures for Obtaining and Handling Blood and Urine Samples.
- 73-3. Certification of Breath Test Operators.
- 73-5. Videotaping at Breath-Test Sites.

73-1. Definitions. (This regulation title remains the same.)

A. SLED. **(This term and its definition remain the same.)**

B. Chemical Analysis. The term "chemical analysis" shall mean a chemical analysis of a person's breath to determine alcohol concentration.

C. Alcohol Concentration. The term "alcohol concentration" shall mean the number of grams of alcohol for each one hundred milliliters of blood by weight or the number of grams of alcohol for each two hundred and ten liters of breath by weight.

D. Breath-Testing Device. The term "breath-testing device" shall mean an instrument for making a chemical analysis and giving the resultant alcohol concentration based on an alveolar air/blood ratio of 2,100:1.

E. Breath Test Operator. The term "breath test operator" shall mean an individual currently holding a valid permit from SLED to perform chemical analysis, of the type set forth within the permit, under the provisions of Sections 23-31-410, 50-21-114, 55-1-100, 56-1-286, 56-1-2130, and 56-5-2950 Code of Laws of South Carolina, 1976, as amended.

F. Videotaping System. The term "videotaping system" shall mean the video equipment, audio equipment, and related hardware used to record breath tests.

73-2. Methods of Making Chemical Analyses. **(This regulation title remains the same.)**

A. Methods. SLED shall approve such methods of performing chemical analysis as are demonstrated to the satisfaction of SLED to produce accurate and reliable determinations of alcohol concentration in a reasonable, convenient, and efficient manner.

B. **Breath-Testing Devices.** SLED hereby approves the method of performing chemical breath analysis to determine alcohol concentration by using breath-testing devices. SLED will consider for approval only devices that first have been tested and approved for their accuracy and reliability by the National Highway Traffic and Safety Administration of the United States Department of Transportation. All approved devices will be specified in the SLED Policy and Procedures Manual.

C. **Certifications.** SLED shall certify each breath-testing device. This certification shall include the calibration of the device with an external standard and the verification of the device's calibration with an internal and/or external standard. Whenever a breath-testing device is certified, this certification will also constitute an inspection of the breath-testing device. For an instrument whose testing station is a mobile van, once the instrument is certified for use in the van, it remains certified regardless of the physical location of the van. Additionally, the certification tests and certification do not have to be repeated if the instrument and/or its software are upgraded.

D. **Inspections.** SLED shall inspect each certified breath testing device (either remotely via computer modem or on-site) at least once every three months. In addition, an inspection is performed after any repair is completed. This inspection shall include the verification of the device's calibration with an internal and/or external standard. The inspection may begin before three months has elapsed and not be completed until after the three-month period. In this case, the time lapse between inspections may exceed three months. This occurrence is acceptable as long as no subject tests are performed until the inspection is completed. Therefore, at least one SLED inspection must be performed in the three months before a subject test. Failure to have an inspection within the required time does not cause revocation of certification for that instrument but signifies that proper procedures for that time were not followed.

E. **Records.** Certification, inspection, and database records shall be maintained by SLED for a minimum of five years. However, the accidental/unavoidable loss of data does not invalidate any breath tests.

73-2.1. **Suggested Procedures for Obtaining and Handling Blood and Urine Samples. (This regulation remains the same.)**

73-3. **Certification of Breath Test Operators.**

A. **Duty of the Chief of SLED.** The Chief of SLED shall certify breath test operators. In addition, the Chief shall issue, deny, renew, terminate, or revoke certifications of individuals to perform chemical analysis because of standards herein set forth.

B. **Ability and Good Character. (This section remains the same.)**

C. **Course of Instruction.** Individuals successfully completing courses held by the South Carolina Law Enforcement Division on chemical tests for intoxication, with a minimum number of course hours and with a curriculum approved in consultation with the Chief or his designated representative, shall be deemed to have demonstrated sufficient ability to qualify for the issuance of a permit. SLED may accomplish part of its statutory responsibilities by administratively delegating the training of breath test operators to the South Carolina Criminal Justice Academy.

D. **Limitation of Permits.** Permits may be limited in scope to the methods or devices for performing chemical analysis to those in which individual applying for a permit has demonstrated competence.

E. **Terms/Conditions of Permits.** Permits shall state the date upon which they are to expire, which date shall in no event be longer than twenty-four months from the date of issuance. Permits shall be subject to renewal at expiration, or at such time before expiration as is convenient for the Chief of SLED. The breath test operator may be required to show continuing ability to perform accurate and reliable chemical analysis and renewed proof of good character, if desired by the Chief of SLED. The Chief of SLED or his representative may at any time examine operators to determine such continuing ability. Permits shall be terminated or revoked by the Chief of SLED upon his finding that the breath test operator does not meet, or no longer meets, the qualifications necessary for the issuance of a permit.

73-4. **Advisory Board. (REPEAL)**

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73-5. Videotaping at Breath-Test Sites.

- A. **Methods.** SLED will approve such methods for performing videotaping that are demonstrated to the satisfaction of SLED to produce quality reproductions in a reasonable, convenient, and efficient manner.
- B. **Videotaping Systems.** SLED will consider for approval only videotaping systems that have been approved for their quality and reliability by SLED. All approved systems will be specified in the SLED Policy and Procedures Manual.
- C. **Certifications.** Pursuant to Section 56-5-2953, SLED will equip all SLED certified breath-testing sites with videotaping systems. SLED shall certify each videotaping system for recording breath tests. Videotaping systems, not certified by SLED, may be used only until SLED certified videotaping systems are installed. To obtain certification, a videotaping system must provide quality playback of a recording. Whenever a videotaping system is certified, this certification will also constitute an inspection of the videotaping system. For a videotaping system whose testing station is a mobile van, once the videotaping system is certified for use in the van, it remains certified regardless of the physical location of the van.
- D. **Inspections.** SLED shall inspect every certified videotaping system on-site at least once every twelve months. However, the inspection may begin before twelve months has elapsed and not be completed until after the twelve-month period. In this situation, the time lapse between inspections may exceed one year. This occurrence is acceptable as long as no subject recordings are performed until the inspection is completed. Therefore, at least one SLED inspection must be performed in the twelve months before a subject recording. Failure to have an inspection within the required time does not cause revocation of certification for that videotaping system but signifies that proper procedures for that time were not followed.
- E. **Records.** Certification and inspection records shall be maintained by SLED for a minimum of five years. However, the accidental/unavoidable loss of these records does not invalidate any videotape recordings or breath test results.

Fiscal Impact Statement:

There will be no costs incurred by the State or any political subdivision in complying with the amendments and additions to Article 1 of Chapter 73.

Document No. 2498

DEPARTMENT OF TRANSPORTATION

CHAPTER 63

Statutory Authority 1976 Code Section 12-28-2930 and 49 CFR part 26

63-700 - 63-718. Disadvantaged Business Enterprises Program

Synopsis:

The regulations concerning the Department of Transportation's Disadvantaged Business Enterprises Program are amended to conform to the requirements of 49 CFR Part 26 and to provide for hearings on certification decisions to be heard by the Administrative Law Judge Division. The amendments also change references to the "Department of Highways and Public Transportation" to the "Department of Transportation" and references to Section 12-27-1320 of the Code of Laws (1976), as amended (the old codification section of the State DBE law) to Section 12-28-2930 of the Code of Laws (1976), as amended (the new section where the State DBE law was recodified in 1995).

Section-by section analysis:

63-700. Requirements of 49 CFR Part 26 are incorporated in the State regulations by reference.

- 63-701. Revises some definitions to comply with the provisions of 49CFR Part 26.
- 63-702. Makes clear that the State regulations incorporate standards and procedures for the Federal as well as State DBE Programs. Incorporates provision of Federal regulations that firms shall be certified for at least a three year period, rather than only one year periods, unless they become ineligible for any reason.
- 63-703. Makes clear that the Department certifies firms for participation in both the State and Federal DBE Programs. Incorporates the certification standards of 49 CFR Part 26 and eliminates the restatement of those standards in the current State regulations. Clarifies the definitions of the terms DBE's, MBE's and WBE's.
- 63-704. Clarifies that the procedures in the State regulations also apply to firms applying for certification under the Federal Program. Deletes the detail of what information must be submitted to the Department in the application. Changes the appeal procedures so that appeals are heard by the Administrative Law Judge Division rather than within the Department of Transportation. Specifically states the requirement under 49 CFR Part 26 for the filing of an annual affidavit that there have been no changes in the firms circumstances that would affect eligibility for certification.
- 63-705. Deletes the "Third-Party Challenge Procedure" and substitutes the new procedure for "Ineligibility Complaints" required under 49 CFR Part 26.
- 63-706. Deletes the old procedure for Decertification and substitutes the new procedure required by 49 CFR Part 26 and provides for decertification hearings before the Administrative Law Judge Division.
- 63-700 – 63-718.
References to old Section 12-27-1320 changed to new Section 12-28-2930; References to the Office of Compliance changed to Office of DBE Program Development; References to Department officials revised to reflect correct titles due to internal Department restructuring.

Text:

63-700. Purpose and Scope.

A. The South Carolina Department of Transportation (hereinafter "Department") promulgates these regulations to carry out the disadvantaged business enterprises program mandated by Section 12-28-2930 of the Code of Laws (1976), as amended (hereinafter "State DBE Program") and to comply with the requirements of 49 CFR Part 26 regarding the disadvantaged business enterprises program required by federal law and regulations (hereinafter "Federal DBE Program").

B. In accordance with Section 12-28-2930(A), the State DBE Program shall be applicable to total state source highway funds expended in a fiscal year on highway, bridge and building construction, and building renovation contracts.

(1) "Total State source highway funds" shall include all revenue generated by State law for use by the South Carolina Department of Transportation (hereinafter the "Department") for the construction and renovation of highways, bridges and buildings.

(2) "Expended in a fiscal year" shall mean become legally obligated to expend within the fiscal year.

(3) "Contracts" shall mean agreements to perform or furnish labor or materials made between the Department and a contractor, after a solicitation for bids.

C. The Department shall ensure that not less than ten percent (as allocated in Section 12-28-2930(A)(1) and (2)) of the funds subject to the State DBE Program are expended through direct contracts with Disadvantaged Business Enterprises (hereinafter "DBEs"). However, this ten percent requirement is subject to the counting provisions of Section 12-28-2930(K) and (M). "Direct contracts" shall mean contracts between the Department and DBEs acting as prime contractors. Direct contracts with DBEs shall be achieved by limiting consideration of bids and proposals on certain projects to those submitted by DBEs only. These shall be known as "set aside" projects or contracts.

D. The Department, as a recipient of federal-aid highway and federal transit funds, is required to implement a Federal DBE Program in accordance with 49 CFR Part 26. Therefore, the Department incorporates herein by reference the provisions of 49 CFR Part 26 and specifically provides that its Federal DBE Program shall be carried out in compliance therewith.

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63-701. Definitions.

For the purposes of these regulations, the following terms shall have the meanings set forth below unless a different meaning is clearly required by the context in which the term is used.

A. Certified DBE --A business determined by the Department to be a bona fide Disadvantaged Business Enterprise (DBE) pursuant to these regulations and 49 CFR Part 26 and whose certification status is in good standing with the Department.

B. Certification --A certification by the Department that a firm is a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards set forth in these regulations and 49 CFR Part 26.

C. Controlled --Having the primary power to direct the management and day to day operations of a business in accordance with the requirements for control set forth in 49 CFR Part 26.

D. Department --The South Carolina Department of Transportation.

E. Disadvantaged Business Enterprise (DBE) -- As set forth in 49 CFR Part 26, a for-profit small business concern owned and controlled by one or more individuals who are socially and economically disadvantaged, which may include businesses owned by ethnic minorities (MBE) or disadvantaged females (WBE).

F. Disadvantaged female --A woman who is (1) a citizen of or a lawfully admitted permanent resident of the United States; and, (2) found by the Department to be socially and economically disadvantaged pursuant to the standards set forth in these regulations and 49 CFR Part 26.

G. Economically disadvantaged --A finding by the Department that a socially disadvantaged individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged as set forth in 49 CFR Part 26.

H. Ethnic minorities --Persons who are (1) citizens or lawfully admitted permanent residents of the United States; and, (2) Black Americans, Hispanic Americans, Native Americans, or members of other racial or national groups; and, (3) found to be socially and economically disadvantaged by the Department pursuant to the standards set forth in these regulations and 49 CFR Part 26.

I. Firm --A business concern which is organized in any form other than a joint venture (e.g. sole proprietorship, partnership, corporation) and which is engaged in lawful commercial transactions.

J. Minority Business Enterprise (MBE) --A disadvantaged business enterprise owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities.

K. "Non-bonded project or contract" --A set aside project or contract in which the Department has waived bond and is acting as bonding agent pursuant to subsection (E) of Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended.

L. Office of DBE Program Development --The office within the Department primarily responsible for certification of DBEs and compliance with State and Federal DBE Program requirements.

M. Official Engineer -- The State Highway Engineer of the South Carolina Department of Transportation, acting directly or through his duly authorized representative.

N. Owned --Ownership and control of at least fifty-one percent of a business, or if the business is publicly owned, ownership of at least fifty-one percent of the stock of the business.

O. Small business concerns --Those business entities defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and Title 13 C.F.R Part 121, which regulations are incorporated herein by reference and made a part of these regulations; except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which have average annual gross receipts over the preceding three fiscal years in excess of \$16.6 million as adjusted by the Secretary of the United States Department of Transportation for inflation.

P. Set aside --A technique which limits consideration of bids for contracts to those submitted by certified DBEs, which technique is only available under the State DBE Program, not the Federal DBE Program.

Q. State DBE Program --The program mandated by Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended, and implemented by the Department pursuant to these regulations.

R. Socially disadvantaged --A finding by the Department that an individual has been subjected to prejudice or cultural bias because of the individual's race, color, sex or ethnic origin without regard to the individual's individual qualities or capabilities in accordance with 49 CFR Part 26.

S. Woman-Owned Business Enterprise (WBE) --A disadvantage business enterprise owned and controlled by one or more disadvantaged females.

63-702. Eligibility for Participation in State DBE Program or Federal DBE Program.

A. To be eligible for the State DBE Program or Federal DBE Program, a firm must be certified by the Department as a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards and procedures set forth in Regulations 63-703 and 63-704 and 49 CFR Part 26.

B. After the first year of certification, to continue to be eligible for participation in the State and Federal DBE Programs, the firm must continue to meet the requirements of 49 CFR Part 26 and to comply with the standards and procedures set forth herein. To continue to be eligible for participation in the State DBE Program, a firm must also meet the following requirements:

- (1) A firm must complete twenty hours of continuing education annually as required in Regulation 63-715;
- (2) A firm must take the following steps toward business development:
 - (a) Participate in a needs assessment to determine the management, engineering and financial levels of the firm;
 - (b) Establish a business development plan;
 - (c) Annually review with the Department the firm's financial statement, income tax returns and updated business development plan;
 - (d) Submit an application for bonding to a bonding agent at least by the third year of active participation.

(3) No DBE may participate in the State DBE Program after June 30, 1999, or nine years from the date of the DBE's first contract, whichever is later, if that DBE performed at least three million dollars in highway contracts awarded pursuant to the State DBE Program for four consecutive years while certified as a DBE. DBEs performing less than three million dollars in highway contracts for four consecutive years may be eligible for the State DBE Program for additional five year periods, provided all requirements of the program are met.

C. To bid on set-aside contracts as a prime or general contractor, an eligible firm must meet the bidding requirements of prequalification and licensing as set forth in Regulation 63-710.

63-703. Certification Standards.

A. General Standards. The Department will certify a firm as a bona fide DBE under the State or Federal DBE Program if the Department determines that the firm meets the eligibility requirements of 49 CFR Part 26.

B. Minority Business Enterprises. For purposes of the State DBE Program, a DBE owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities is known as a Minority Business Enterprise ("MBE").

C. Women-owned Businesses. For purposes of the State DBE Program, a DBE owned and controlled by one or more disadvantaged females is known as a Women-Owned Business Enterprise ("WBE").

63-704. Procedures for Certification.

A. Application to Department. All firms applying for certification as a DBE under the State or Federal DBE Program must submit a completed application and Certification Affidavit on forms provided by the Department, which shall be signed by the authorized representative of the firm and notarized. The application shall indicate that the applicant is applying for participation in the State DBE Program, the Federal DBE Program, or both.

B. Firms Ineligible to Apply for Certification. The Department shall not accept applications from the following applicants:

- (1) Applicants who have been determined by the Department to be ineligible for participation in the State or Federal DBE Programs within one year prior to the date of application.
- (2) Applicants who have been determined by the U.S. Department of Transportation to be ineligible for participation as a DBE in U.S. Department of Transportation projects, during the period of ineligibility.

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C. Information Required with Application. The completed application shall be submitted to the Department's Office of DBE Program Development along with copies of the requested information.

D. Request for Additional Information. After receipt of the application for certification, the Department will examine the application and notify the applicant in writing of any apparent errors or omissions and request any additional information needed.

E. On Site Reviews. The Department will conduct an on site review to verify and evaluate the information provided by the applicant firm. Failure of an applicant to cooperate in facilitating an on-site review shall be grounds for denial of certification. An on-site review may include, but is not limited to, the following:

- (1) Interviews with owners, key officers and managers; and,
- (2) Visits to job sites or facility sites.

F. Review of Application. The Department will review every completed application along with the results of the on-site review and notify the applicant in writing of its decision.

G. Notice of Certification. Certification shall be effective upon receipt by the applicant of the Notice of Certification.

H. Notice of Denial. If the Department intends to deny the application for certification, the Department shall provide, by Certified Mail, Return Receipt Requested, or by personal delivery to the office of the applicant, a Notice of Denial which will contain:

- (1) The specific facts and grounds upon which the denial is based;
- (2) A statement that the applicant has the right to an administrative hearing pursuant to the State Administrative Procedures Act, Section 1-23-310, et seq., Code of Laws of South Carolina (1976), as amended;
- (3) A statement that the denial shall become conclusive and final agency action if no request for hearing is filed with the Department's Office of DBE Program Development within fifteen days of the applicant's receipt of the Notice of Denial.

I. Request for Hearing. All requests for hearing shall be made in writing and shall be filed with the Department's Office of DBE Program Development within fifteen days of receipt of the Notice of Denial and must include:

- (1) The name and address of the party making the request;
- (2) A statement that the party is requesting a hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600;
- (3) A reference to the date of the Notice of Denial of the application.

J. Failure to Request Hearing. If the applicant fails to request a hearing within fifteen days after receipt of the Notice of Denial, the denial shall become the final agency decision. The final agency decision for an application for participation in the Federal DBE Program may be appealed to the U.S. Department of Transportation in accordance with 49 CFR Section 26.89.

K. Hearings. If a hearing is requested, it shall be conducted by an Administrative Law Judge in accordance with S. C. Code Section 1-23-600 under contested case procedures.

L. Recertification. Once a firm has been certified, it shall remain certified for a period of at least three years unless and until its certification is removed through the decertification procedures set forth in 63-706.

M. Changes in Address, Management or Ownership. A certified firm shall notify the Department's Office of DBE Program Development in writing within 30 days of any change of address, management or ownership of the firm.

N. No Change Affidavit. A certified firm must provide the Department, every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners, before a person who is authorized by state law to administer oaths, affirming that there have been no changes in the firm's circumstances which would affect its eligibility for DBE status. The affidavit shall be in a form acceptable to the Department.

63-705. Ineligibility complaints.

A. Any person may file with the Department a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. Complaints must be sent to the Department in care of the Office of DBE Program Development, P. O. Box 191, Columbia, SC 29202. The Department is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

B. The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the Department will so advise the complainant. Complainants are advised that failure to waive the privilege of confidentiality may result in the closure of the investigation.

C. The Department will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The Department may request additional information from the challenged firm or conduct any other investigation that it deems necessary.

D. If the Department determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination, in accordance with Section 63-706 below.

E. If the Department determines that such reasonable cause does not exist, the Department must notify the complainant and the challenged firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

63-706. Procedures for Decertification.

A. Determination of reasonable cause to decertify. If the Department determines, based on notification by the firm of a change in its circumstances or other information that comes to its attention, that there is reasonable cause to believe that a currently certified firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, in accordance with Paragraph B below. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

B. Notice of Proposed Decertification. The written Notice of Proposed Decertification shall contain the following:

1. The specific facts or conduct relied upon to justify a finding that there is reasonable cause to remove the firm's certification;
2. The statutory or regulatory provisions which are alleged to have been violated;
3. A statement that the firm has the right to request a hearing before the State Administrative Law Judge Division pursuant S.C. Code Section 1-23-600 under contested case procedures;
4. A statement that the Department will make a final finding of decertification unless a request for hearing is filed within fifteen (15) days of the receipt of the Notice.

C. Request for Hearing. A firm making a request for hearing must do so in writing and must file such request with the Department's Office of DBE Program Development within fifteen (15) days of receipt of the Notice of Proposed Decertification. The request shall include:

- (1) The name and address of the firm making the request;
- (2) A statement that the firm is requesting a hearing before the State Administrative Law Judge Division;
- (3) A reference to the Notice of Proposed Decertification, the date thereof, and the specific grounds upon which the action is being challenged.

D. Hearings.

(1) Procedures and burden of proof. All hearings requested shall be conducted by the State Administrative Law Judge Division ("ALJ Division") in accordance with the Rules of Procedure for that Division and contested case procedures. In such hearings, the Department bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards. Appeals from the decisions of the Administrative Law Judge shall be in accordance with State law.

(2) Request to Submit Written Information and Arguments Only. A firm may elect to present evidence and arguments to the Administrative Law Judge in writing, without the necessity of a hearing. In such a situation, the firm must file a statement with the Administrative Law Judge assigned to the case that the firm wishes to present written evidence and arguments and to waive its right to a contested case hearing.

E. Effect of Failure to Request a Hearing. If the firm fails, within fifteen (15) days after receipt of the Notice of Proposed Decertification, to file a Request for Hearing, the Department may decertify or remove the eligibility of

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the firm based upon the grounds set forth in the Notice of Proposed Decertification. A Notice of Decertification shall be sent to the firm pursuant to Paragraph G below.

F. Grounds for Decision. A decision to decertify or remove eligibility may not be made based upon a reinterpretation or changed opinion of information available to the Department at the time of its certification of the firm. The decision to decertify or remove eligibility may be made only on one or more of the following grounds:

- (1) Changes in the firm's circumstances since the certification of the firm that render the firm unable to meet the eligibility standards;
- (2) Information or evidence not available to the Department at the time the firm was certified;
- (3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- (4) A change in the certification standards or requirements since the firm was certified; or
- (5) A documented finding that the Department's determination to certify the firm was factually erroneous.

G. Notice of Decertification.

(1) If heard by ALJ Division. If the case is heard by the Administrative Law Judge Division, and the decision is to decertify or remove the eligibility of the firm, the Department shall send a Notice of Decertification to the firm.

(2) Contents of Notice. The Notice of Decertification shall inform the firm of the consequences of the decision on pending contracts and of the availability of an appeal to the United States Department of Transportation under 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

(3) Copy to Complainant. When the proceedings to remove the eligibility of the firm were initiated pursuant to Section 63-705 above, the Department will also send a copy of the Notice of Decertification to the complainant.

H. Status of firm during proceeding. A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible unless there is a notice issued as provided for in Paragraph G above.

I. Effects of removal of eligibility. When a firm's eligibility is removed, the effect on existing or pending contracts shall be as provided in 49 CFR Section 26.87.

J. Availability of appeal. When the Department issues a Notice of Decertification pursuant to this section, the firm, where appropriate, may appeal the decision to the United States Department of Transportation pursuant to 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

63-707. Guidelines for Selection of Set Aside Projects.

In selecting and designing contracts suitable for set aside projects, the Department will consider a number of factors including, but not limited to, the following:

- A. Availability of certified DBEs within 100 miles of work to be performed;
- B. Capabilities of the available certified DBEs in relation to the type of work required by the contract;
- C. Limitation of estimated value of contract to \$250,000.00 in most cases;
- D. Limitation of the work of a single contract to a maximum of four roads within a reasonable distance of each other;
- E. Equitable geographic distribution of contracts throughout the State, insofar as is possible with available contracts;
- F. Availability of technical assistance for contract;
- G. The requirement of Section 12-28-2930(c) that the Department shall advertise a number of highway construction projects at each regularly scheduled highway letting to be bid exclusively by DBEs.

63-708. Waiver of Bonding.

A. The Department may waive bonding on set aside contracts with estimated construction costs not exceeding Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

B. Bonding requirements that may be waived include the following:

- (1) On highway construction or bridge construction contracts,
 - (a) Proposal guaranty or bid bond;
 - (b) Performance and indemnity bond required by Section 57-5-1660(a)(1) of the Code of Laws of South Carolina (1976), as amended;
 - (c) Payment bond required by Section 57-5-1660(a)(2) of the Code of Laws of South Carolina (1976), as amended.
- (2) On building construction or building renovation contracts,
 - (a) Bid security required by Section 11-35-3030 of the Code of Laws of South Carolina (1976), as amended;
 - (b) Performance bond required by Section 11-35-3030(2)(i) of the Code of Laws of South Carolina (1976), as amended;
 - (c) Payment bond required by Section 11-35-3030(2)(ii) of the Code of Laws of South Carolina (1976), as amended.

C. The Department shall process claims arising on non-bonded set-aside projects pursuant to Regulation 63-717.

63-709. Advertisement and Notice of Set Aside Projects.

A. All projects designated as set asides will be advertised for at least two weeks in one or more daily newspapers in this State, at least thirty days prior to the date for receiving bids on such projects. The advertisement shall indicate whether the project is a non-bonded or bonded project.

B. The Department will give written notice by mail of set aside contracts to all certified DBEs who are eligible for bidding on the project.

63-710. Requirements for Bidding on Set Aside Projects.

A. All bidders on set aside projects must be eligible for participation in the State DBE Program as provided in Regulation 63-702.

B. Bidders on set aside contracts for highway and bridge construction contracts must be prequalified pursuant to 25 S.C. Code Ann. Regs. 63-300 through 63-308 (1976). Any bidder eligible to participate in the State DBE Program whose prequalification status is not renewed solely because of its lack of net liquid assets may request a review of its prequalified status. A Review Committee shall be appointed by the State Highway Engineer for this purpose. The Department's Executive Assistant for Minority Affairs or a representative from the Office of DBE Program Development will be a member of the Review Committee.

C. Bidders on set aside contracts for building construction or building renovation contracts are subject to the provisions of the State Consolidated Procurement Code, S.C. Code Ann. Section 11-35-10, et seq. (1976), as amended, and all regulations promulgated pursuant thereto. Bidders on building construction and building renovation contracts must have a bidder's and contractor's license from the South Carolina Contractor's Licensing Board, if required by law.

D. All bidders on set aside contracts are subject to the provisions of 25 S.C. Code Ann. Regs. 63-309 and 63-310 (1976) regarding disqualification of bidders for violations of bidding laws or offenses involving business integrity.

E. In the event of any conflict between the above stated statutes and/or regulations and these regulations, these regulations shall control.

F. All bidders are subject to the bidding requirements and conditions as set forth in the Department's Standard Specifications for Highway Construction, specifically Section 102.

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63-711. Bid Evaluation.

- A. If the lowest responsive bid by a responsible bidder is within ten percent of the Official Engineer's estimate, the Department will award the contract to the bidder making such bid.
- B. Preference must be given to an otherwise eligible and responsible South Carolina contractor submitting a responsive bid not exceeding an otherwise eligible out-of-state contractor's low bid by two and one-half percent.
- C. If the Department fails to award an advertised set aside contract for reasons unrelated to the total costs of the project, the contract may be readvertised as a set aside contract.

63-712. Negotiation of Low Bid.

- A. If the lowest responsive bid by a responsible bidder exceeds the Official Engineer's estimate by more than ten percent, the Department may afford the bidder the opportunity to show just cause why the bid exceeds the ten percent range or may enter into negotiations with the bidder to make reasonable changes in the plans and specifications to bring the bid within ten percent of the Original Engineer's estimate.
- B. The Department will not consider bids which exceed the Official Engineer's estimate by more than thirty percent, unless the difference in price is due to some error or miscalculation on the part of the Department.
- C. If the Department determines that the bidder should be given the opportunity to show just cause or to enter into negotiations, written notice shall be given to the low bidder within seven days of the closing of bids. The notice shall specify a time and place that the bidder may meet with appropriate Department representatives to discuss the bid. Such meeting shall be held no later than fourteen days after the closing of bids. If the low bidder fails to appear at the time and place designated in the notice, then the Department may reject the bid. Persons entitled to be present at such meeting shall include the Official Engineer or his designee; the Official Engineer's representative; the Executive Assistant for Minority Affairs; the Director of the Office of DBE Program Development or his designee; the bidder or the bidder's designee; the bidder's representative. The decision as to whether just cause has been shown or whether the plans and specifications can be reasonably changed is within the sole discretion of the Official Engineer and such decision shall be final.

63-713. Letter to Lending Institutions.

When a DBE receives a contract, the Department will furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the DBE in negotiating lines of credit with lending institutions.

- (1) For highway and bridge construction contracts, this letter will be in the form of the Statement of Award.
- (2) For building construction and renovation contracts, this letter will be in the form of the Notice to Proceed.

63-714. Technical Assistance to DBEs.

- A. Level of Assistance. The Department will make available technical assistance for DBEs in accordance with state law.
- B. Supportive and Developmental Services. The Department will provide written and oral instruction on competitive bidding, management techniques and general business operations. These services may be provided through continuing education programs sponsored by the Department, technical and developmental services contractors, and/or direct services.
- C. Lead Engineer. The Department will designate a lead engineer to ensure positive communication, provide helpful technical information, encourage quality performance, and assist with on site problems. The Department may designate an engineer in each district to serve as the lead engineer for set aside projects. The lead engineer shall work with the Office of DBE Program Development, the Technical and Developmental Services Contractor and the Department's engineers to provide early technical assistance to DBEs with construction projects in each highway district.
- D. Assistance from Established Contractors/Engineers. The Department will utilize the experience of established contractors and/or engineers to provide DBEs professional and technical assistance aimed toward meeting the

standards, specifications, timing, quality and other requirements of their set aside contracts. The Department will provide this assistance as follows:

(1) The Department will provide a list of established engineers, architects and/or contractors who are available on a part time basis to work with DBEs on contracts.

(2) A DBE must apply for technical assistance on an application form provided by the Department within thirty days after award of a set aside contract.

(3) The Official Engineer will negotiate with the engineer, architect and/or contractor to provide the specific services requested by the DBE or any other services deemed necessary by the Department based upon the DBE's experience and skills as a contractor.

(4) The Department may provide, through a supplemental agreement to the DBE set aside contract, specific funds for the DBE to hire the engineer, architect and/or contractor. The engineer, architect and/or contractor will be a subcontractor of the DBE and not of the Department.

63-715. Continuing Education Requirements.

A. All DBEs participating in the State DBE Program must be represented by a company officer in at least twenty hours of continuing education each year.

B. For purposes of this section, company officer shall mean any of the following:

(1) If a corporation, one or more of the elected corporate officers;

(2) If a partnership, one or more of the partners;

(3) If a sole proprietorship, the sole proprietor or owner.

C. The Department will determine how many credit hours can be earned by a DBE for attendance at a continuing education activity. Generally, one hour of instructional time will equal one hour of credit, provided that the instruction relates to highway or building construction or business development in these industries.

D. Hours of credit for continuing education must be earned through attendance at an educational program sponsored, co-sponsored or approved by the Department. Successful completion of a course given by a college, university or technical school may also qualify for credit hours, if approved by the Department.

E. The Department will provide for reasonable notice to be given to all certified DBEs regarding prospective continuing education activities which have been approved by the Department or which will be sponsored by the Department. The notice shall also state the number of credit hours approved for each activity. The Department will publish within the first quarter of each calendar year a list of the continuing education opportunities to be provided by the Department in that calendar year.

F. A sponsor wishing to apply for approval of continuing educational activities shall submit to the Department's Office of DBE Program Development:

(1) An application for status as an approved sponsor on forms provided by the Department;

(2) Copies of written materials described in the application form;

(3) Such further information as the Department may require. Sponsor approval must be renewed every five years; provided, however, that sponsor approval may be withdrawn for cause at any time after sixty days notice to the sponsor.

G. Educational events, courses or activities presented by a sponsor which have not been granted Department approval will be considered for approval on an individual basis. An application for approval of a program may be submitted to the Department's Office of DBE Program Development on forms provided by the Department by the sponsor or the DBE who desires credit for attending the program. The Department will consider applications for the retroactive as well as prospective approval of programs.

H. The Department may provide scholarships to certified DBEs who attend construction-related continuing education activities approved by the Department. Scholarships shall be limited to Two Hundred and No/100 (\$200.00) Dollars per firm annually.

I. At the time a certified firm requests recertification, the firm shall submit to the Department's Office of DBE Program Development a report of all continuing education activities that the firm completed in the preceding year. Any firm that fails to fulfill the annual continuing education requirement shall be ineligible for participation in the State DBE Program.

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63-716. Special Provisions Applicable to Non-bonded Projects.

- A. By submission of a bid on a non-bonded project, the DBE grants permission to the Department to issue joint checks to suppliers, vendors or subcontractors who supply materials, render services or perform work on the contract when joint checks are, in the Department's judgment, necessary or desirable.
- B. A bid on a non-bonded project shall include a list of all suppliers, vendors or subcontractors who the DBE proposes to use in performing the contract.
- C. A DBE on a non-bonded project shall not permit a subcontractor to perform work on a contract until the subcontractor and the subcontract have been approved by the Department. To obtain such approval after the award of the contract, the Contractor must submit a request for approval and a copy of the executed subcontract to the Department's Official Engineer. The Department will approve or disapprove such subcontractor within a reasonable amount of time after the receipt of such request.
- D. A DBE on a non-bonded project shall not incorporate materials or supplies into the work of a contract until the executed invoice or purchase agreement has been submitted to the Department. The DBE must submit the copy of the invoice or purchase agreement to the Official Engineer, as appropriate.
- E. Failure to obtain approval for subcontractors or subcontracts, or failure to submit copies of subcontracts, purchase agreements or invoices, shall constitute, at the Department's option, a default of the contract.
- F. Termination of any non-bonded contract for default of the contractor renders the contractor ineligible for any further Department non-bonded contracts for a minimum period of two years from the date of the Notice of Default. The Department may also consider defaulting contractors ineligible to bid on other Department contracts pursuant to the provisions of Section 102.03(e) of the Department's Standard Specifications for Highway Construction and ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.
- G. In the event of default, the provisions of Section 108.10 of the Department's Standard Specifications for Highway Construction shall apply, with the Department acting as surety. Any costs or charges incurred by the Department, or for which the Department, acting as such surety, shall become liable as a result of the default, shall be charged against the defaulting DBE contractor. The costs and charges may include, but are not limited to: (1) charges incident to preparing bid proposal and arranging for work to be resumed; and, (2) the excess of the expense of completing the work under the contract deducted from any monies due or which may be due the DBE contractor. The defaulting DBE contractor shall reimburse or indemnify the Department, as surety, for all such costs or charges. The defaulting DBE contractor shall be ineligible to bid as a prime contractor on any Department contracts and shall be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department for such costs or charges.

63-717. Claims Procedure on Non-bonded Contracts.

- A. Every person who has furnished labor or material under a Department-approved contract in the prosecution of the work of a non-bonded contract and who has not been paid in full therefor before the expiration of sixty days after either (1) the day on which the last of the labor was done or performed by the claimant, or material was furnished or supplied by the claimant, for which such claim is made; or, (2) the day on which payment was made by the Department to the DBE contractor for the work or materials for which such claim was made, shall have the right to make a claim to the Department, acting as Surety, for the amount, or the balance thereof, unpaid at the time the claim is made; provided, however, that any person having a direct contractual relationship with a sub-contractor but no contractual relationship expressed or implied with the DBE prime contractor shall have the right to make a claim upon giving written notice to the DBE prime contractor within sixty days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. In no event shall any claim be made after the expiration of ninety days from the date of final payment by the Department.

- B. No claim shall be considered legitimate unless it is supported by a written agreement or invoice.
- C. Within thirty days after receiving a claim, the official engineer shall refer the claim to the Department's Official Engineer, to gather the information necessary for an analysis of the claim. The Official Engineer shall forward the claim along with any additional information to a Claims Committee. The Claims Committee shall be appointed by the State Highway Engineer. The Department's Executive Assistant for Minority Affairs shall serve as an Ex-Officio member of each Claims Committee.
- D. The Claims Committee shall give ten days written notice to the claimant and DBE contractor of the time and place for an informal hearing on the claim. At such hearing the claimant and DBE contractor shall have the right to appear and present evidence concerning the validity of the claim. The DBE contractor, or an employee of the DBE contractor having knowledge of the claim, must appear at the hearing if requested by the Claims Committee. Failure of the DBE contractor, or employee of the DBE contractor, to appear when requested may, in the Department's discretion, constitute grounds for immediate termination of the contract.
- E. The Claims Committee shall take into account circumstances such as unsettled payments and disputes with the Department or other circumstances that are beyond the DBE's control.
- F. The Claims Committee shall make a written recommendation to the State Highway Engineer as to the resolution of the claim within ten days of the hearing. The State Highway Engineer shall consider the recommendation and make the final decision as to the resolution of the claim. The State Highway Engineer will notify the claimant and DBE contractor of the decision within ten days after receipt of the Claims Committee's recommendation.
- G. If the Department's decision requires the payment of money to the claimant by the DBE contractor, the Department shall pay such money to the claimant on behalf of the DBE contractor. Payment shall be made to the claimant within twenty-one days of the Department's final decision. Payment shall be made from contract funds or retainage. In the event contract funds or retainage are insufficient to make full payment of claim, the payment amount shall be charged to the same funding source as was used for the project out of which the claim arose.
- H. The DBE contractor shall reimburse or indemnify the Department for all amounts paid to a claimant on behalf of the DBE contractor. The DBE contractor shall be ineligible for further Department non-bonded contracts until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department. The DBE contractor may also be disqualified from bidding on any and all Department contracts pursuant to the provisions of Section 102.3 of the Department's Standard Specifications for Highway Construction and be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.

63-718. Reporting Requirements.

- A. The Department shall issue an annual report, thirty days after the close of the fiscal year, listing all contracts awarded under the State DBE Program as specifically set forth in Section 12-28-2930(I).
- B. The Department shall record each time there are no certified DBEs available to perform a set aside contract. The unavailability of certified DBEs shall be verified by written documentation.
- C. The Department may count toward the yearly set aside goal the following amounts:
- (1) The total amount of all set aside contracts where the DBE performs at least thirty percent of the work with its own forces;
 - (2) Only the portion of the contract performed by the DBE's own forces, when the DBE performs less than thirty percent of the work of a set aside contract;
 - (3) The total amount of any contract awarded to a certified DBE for technical assistance or other consultant services, if the DBE is South Carolina based and experienced in assisting with the development of minority firms;
 - (4) The total amount of all non-set aside state-funded contracts awarded to certified DBEs;
 - (5) Subcontracts entered into between prime contractors and certified DBEs, to the extent such contracts are funded by state source highway funds, if these subcontracts are verified by the Department records.

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Preliminary Fiscal Impact Statement:

The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed amendments.

Document No. 2470
WORKERS' COMPENSATION COMMISSION
CHAPTER 67
Statutory Authority: 1976 Code Section 42-3-30

67-803. Settlement by Agreement and Final Release.

67-1204. Reporting Attorneys Fees for Approval.

Synopsis:

The Commission proposes to amend these regulations in order to update, reflect current practice, and further streamline operations. The proposed amendments will facilitate the approval procedure for an Agreement and Final Release to allow another commissioner to sign the Agreement if the assigned commissioner is not available and to facilitate the approval procedure for a Form 61.

Instructions:

67-803. Settlement by Agreement and Final Release. Items B and B(2)(b) are amended. Items A, A(1), A(2), A(3), A(4), A(5), B(1), B(1)(a), B(1)(b), B(1)(c), B(1)(d), B(2), B(2)(a), B(2)(c), B(2)(d), and C, remain unchanged.

67-1204. Reporting Attorneys Fees for Approval. Items C, E(2)(b), and F are amended. Items A, B, D, D(1), D(2), E, E(1), E(2), E(2)(a), and E(2)(c) remain unchanged.

Text:

67-803. Settlement by Agreement and Final Release.

A. If the parties agree to the terms of a settlement by entering into an Agreement and Final Release, the document shall include the following:

- (1) The caption of the case; and
- (2) A statement of the facts at issue; and
- (3) The date and nature of the alleged injury coinciding with the date and nature of each injury on the Form 12A, Form 50, or Form 52; and
- (4) The amount of the settlement and terms of payment; and
- (5) The signature of the claimant, his or her attorney if any and the attorney for the employer's representative.

B. An Agreement and Final Release is approved when signed by the Commissioner(s) assigned to the case, or by another Commissioner if the assigned Commissioner is unavailable. An approved Agreement and Final Release is binding. The employer's representative pays compensation according to its terms.

(1) If the claimant is not represented by an attorney, the Agreement and Final Release must be approved at an informal conference as follows:

(a) The employer's representative must request an informal conference by filing an updated Form 18 showing status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. The claimant may request an informal conference by writing to the Judicial Department.

(b) The attorney for the employer's representative and the claimant attend the informal conference. If the parties reach an agreement at the informal conference that the Commissioner approves, the Agreement and Final Release is signed by the claimant, the attorney for the employer's representative and the Commissioner.

(c) The Commissioner files the Agreement and Final Release with the Commission for the approval and signature of three other Commissioners. If three other Commissioners approve by signing the Agreement and Final Release, the Commission returns an approved copy to the attorney for the employer's representative. The attorney for the employer's representative shall provide the claimant a copy of the approved Agreement and Final Release.

(d) If four Commissioners do not approve the Agreement and Final Release, the Agreement and Final Release is neither approved nor binding. The Commission will set the claim for hearing according to R.67-804 I.

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the attorney for the employer's representative sign the Agreement and Final Release. The Agreement and Final Release may then be approved by the Commissioner assigned the claim without an appearance before a Commissioner as follows:

(a) The attorney for the employer's representative files the original and one copy of the proposed Agreement and Final Release with the Claims Department.

(b) The claim is assigned to the Commissioner who last issued an order in the case, or if an order has not been issued, to the Commissioner assigned to the claim, or to any other Commissioner if the assigned Commissioner is unavailable.

(c) The Commissioner reviews the Agreement and Final Release and he or she may sign and approve it.

(d) An approved copy of the Agreement and Final Release is returned to the attorney for the employer's representative.

(e) The employer's representative must provide the claimant a copy of the approved Agreement.

C. Commissioners will not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. If the Agreement and Final Release is not approved, the Commissioner assigned the claim may schedule an informal conference or hearing according to R.67-804 I.

67-1204. Reporting Attorneys Fees for Approval.

A. An attorney shall report and obtain approval of any fee for services rendered in a worker's compensation claim as follows.

B. When the parties agree to a fee based on an hourly rate and/or retainer the total amount of the fee shall be reported on the Form 19, filed according to R.67-414.

C. When the parties agree to a contingent fee contract, the attorney shall report the fee by filing the original and one copy of a Form 61, Attorney Fee Petition, along with a stamped, self-addressed envelope with the Commission's Claims Department.

D. Obtaining approval of a fee:

(1) Upon receipt of a Form 19 reporting for approval a fee based on an hourly rate and/or retainer, the fee may be approved according to R.67-1205(A).

(2) Upon receipt of a Form 61 reporting for approval a contingent fee, the Commissioner or his or her designee shall review the computation of the fee according to R.67-1205.

E. A Form 61 may be marked "Approved" and a copy of the form returned to the attorney when the fee calculation complies with R.67-1205.

(1) A Form 61 may be marked "Rejected" and returned to the attorney when it appears that the calculation does not comply with R.67-1205.

(2) If a Form 61 is rejected, the attorney may adjust his or her fee calculation and file an original and one copy of an amended Form 61 with the word "Amended" boldly written or typed on the form.

(a) The amended Form 61 will be reviewed and if it complies with R.67-1205 marked "Approved" and a copy returned to the attorney.

(b) If, in the opinion of the Commissioner presented the claim, the amended Form 61 does not comply with R.67-1205 the Commissioner shall immediately schedule a hearing and consider the amended Form 61, argument of counsel, and testimony, if any.

(c) The attorney and his or her client will be notified of the hearing by receipt of a hearing notice.

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F. If an attorney and his or her client are notified that a Form 61 has been rejected, the attorney may file a motion requesting approval of a fee without submitting an amended Form 61. The motion may be filed according to R.67-215 with the Commission's Judicial Department . The motion may be heard according to R.67-215, unless the motion requests a hearing to present testimony or evidence.

Fiscal Impact Statement:

The South Carolina Workers' Compensation Commission estimates there will be no additional costs incurred by the State and its political subdivisions to comply with these proposed regulations.