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# SOUTH CAROLINA STATE REGISTER

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

# ***SOUTH CAROLINA STATE REGISTER***

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

## **STYLE AND FORMAT**

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

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

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

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

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

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

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

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

## **2019 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	1/11	2/8	3/8	4/12	5/10	6/14	7/12	8/9	9/13	10/11	11/8	12/13
Publishing Date	1/25	2/22	3/22	4/26	5/24	6/28	7/26	8/23	9/27	10/25	11/22	12/27

## **REPRODUCING OFFICIAL DOCUMENTS**

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

## **PUBLIC INSPECTION OF DOCUMENTS**

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## **ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS**

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

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

## **EMERGENCY REGULATIONS**

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

## **REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW**

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

## **EFFECTIVE DATE OF REGULATIONS**

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

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

## SUBSCRIPTIONS

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 The history, status, and full text of these regulations are available on the  
 South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4848			Contractor's Licensing Board	1/19/20	LLR-Contractor's Licensing Board
4852			Board of Long Term Health Care Administrators	2/03/20	LLR-Board of Long Term Health Care Administrators
4873			Air Pollution Control Regulations and Standards	3/17/20	Department of Health and Envir Control
4876			Electronic Transmissions	4/26/20	Secretary of State
<b>Committee Request Withdrawal</b>					
4843			Board of Physical Therapy Examiners	Tolled	LLR
4861			Consolidated Procurement Code	Tolled	State Fiscal Accountability Authority



## 2 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

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

<b>DOC. No.</b>	<b>SUBJECT</b>	<b>HOUSE COMMITTEE</b>	<b>SENATE COMMITTEE</b>
4848	Contractor's Licensing Board	Regulations and Admin. Procedures	Labor, Commerce and Industry
4852	Board of Long Term Health Care Administrators	Regulations and Admin. Procedures	Medical Affairs
4873	Air Pollution Control Regulations and Standards	Regulations and Admin. Procedures	Agriculture and Natural Resources
4876	Electronic Transmissions	Regulations and Admin. Procedures	Judiciary
<b>Committee Request Withdrawal</b>			
4843	Board of Physical Therapy Examiners	Regulations and Admin. Procedures	Medical Affairs
4861	Consolidated Procurement Code	Regulations and Admin. Procedures	Finance

**Executive Order No. 2019-22**

**WHEREAS**, Article I, Section 2 of the United States Constitution requires an enumeration of the population every ten years to apportion congressional representation among the states; and

**WHEREAS**, in accordance with Section 141 of Title 13 of the United States Code, the next federal decennial census will begin on April 1, 2020 (“2020 Census”) and will provide an updated official count of the State of South Carolina’s population; and

**WHEREAS**, it is essential that the 2020 Census obtain a complete and accurate count of South Carolina’s population, because the resulting figures will be used in apportioning congressional representation, allocating federal formula grant funds, redistricting state and local legislative bodies, and determining other important matters until the next decennial census; and

**WHEREAS**, following the previous decennial census in 2010, the State of South Carolina gained an additional seat in the United States House of Representatives due to significant population growth, and the 2020 Census is anticipated to confirm further increases in the State’s population; and

**WHEREAS**, it is vital that the 2020 Census identify and collect accurate data from individuals and communities that are historically difficult to locate or count, including military personnel, young children and the elderly, low-income persons, and rural residents; and

**WHEREAS**, the United States Census Bureau has recommended that each state form a “Complete Count Committee” to improve awareness and understanding of the importance of the decennial census and to encourage the populace to participate in the 2020 Census; and

**WHEREAS**, the State of South Carolina is committed to ensuring that the 2020 Census provides a complete and accurate count of its population, which will require expedited planning, education, and outreach efforts in collaboration with local governments and community organizations; and

**WHEREAS**, pursuant to article IV, section 15 of the South Carolina Constitution, as Governor of the State of South Carolina, the undersigned “shall take care that the laws be faithfully executed.”

**NOW, THEREFORE**, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby create and establish the South Carolina 2020 Complete Count Committee (“Committee”), which shall be constituted and shall execute its duties and responsibilities as set forth below:

**Section 1. Membership**

A. The Committee shall consist of at least twenty-five (25) members appointed by the Governor and may include, but shall not be limited to, certain state and local government officials or their designees, representatives of various community and stakeholder organizations, and such other and further members as may be appointed by the Governor in an effort to represent or reflect the diverse geographic, socioeconomic, gender, racial, occupational, political, and cultural composition of the State of South Carolina.

B. The Lieutenant Governor shall serve as Chair of the Committee. In the absence of the Lieutenant Governor, the Governor shall designate another member of the Committee to serve as Chair.

C. All members of the Committee shall serve at the pleasure of the Governor, who may select and appoint a successor in the event of a vacancy and may otherwise alter the composition of the Committee at any time. Committee shall serve *ex officio*.

## **4 EXECUTIVE ORDERS**

### **Section 2. Objectives**

The Committee shall act and serve in an advisory capacity and shall have the following objectives:

A. Work collaboratively with the United States Census Bureau and any other in-state Complete Count Committees to increase awareness of, and encourage South Carolinians to respond to, the 2020 Census;

B. Utilize the Committee's knowledge, expertise, and experience to educate individuals and communities regarding the 2020 Census and the importance of participating in the same;

C. Identify opportunities and resources to promote and increase awareness of the 2020 Census through targeted outreach efforts;

D. Coordinate cooperative efforts and facilitate partnerships between and among the United States Census Bureau, local governments, any other in-state Complete Count Committees, and community organizations to ensure maximum participation in the 2020 Census and a complete and accurate count of South Carolina's population.

### **Section 3. Administration**

A. The Committee shall meet at least quarterly and shall convene upon the call of the Chair or the Governor. A simple majority of the members of the Committee shall constitute a quorum for the transaction of all business of the Committee.

B. The Chair, in consultation with the Governor, may establish and appoint one or more subcommittees or working groups as necessary to assist the Committee in pursuing its objectives with respect to specific issues, communities, or geographic areas.

C. As the Chair deems necessary and appropriate, the Committee may consult with or enlist additional individuals, officials, or agencies, including the United States Census Bureau, to advise or assist the Committee regarding its objectives and any available information, expertise, or resources related to the same.

D. The Office of the Governor shall provide staff and administrative support services to the Committee, and all agencies or departments in the Governor's Cabinet shall cooperate with and assist the Committee as needed.

This Order is not intended to create, and does not create, any individual rights, privileges, or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of South Carolina or its agencies, departments, officers, employees, or any other entities or persons, to include the Committee or any member thereof.

This Order is effective immediately and shall remain in effect until May 31, 2020, unless otherwise superseded or rescinded.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 1st DAY OF AUGUST, 2019.**

**HENRY MCMASTER  
Governor**

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

## NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication on **August 23, 2019** 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 Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201 at (803) 545-3495.

**Affecting Charleston County****\*Medical University Hospital Authority d/b/a MUSC Medical Center**

Addition of 29 general hospital beds for a total project cost of \$7,350,407.00.

**Affecting Dorchester County****ABS LINCS SC, Inc. d/b/a ABS LINCS SC, Inc., d/b/a Palmetto Pines Behavioral Health**

Addition of 5 Residential Treatment beds for a total of 69 Residential Treatment beds at a total project cost of \$25,349.39.

**Affecting Horry County****Carolina Regional Cancer Center, LLC d/b/a Carolina Regional Cancer Center**

Renovation of existing space and the replacement of a 2300iX Linear Accelerator for a new Elekta Versa HD Signature (SRS) Configuration Linear Accelerator resulting in the establishment of SRS as a new service, and replacement of an existing 6EX Linear Accelerator for a 2007 Elekta Synergy System Linear Accelerator at a total project cost of \$3,926,309.78.

**Affecting Richland County****Lexington County Health Services District, Inc. d/b/a LMC Northeast Outpatient Surgery Center**

Construction of a new Ambulatory Surgical Facility with the transfer of 3 outpatient surgery suites at a total project cost of \$19,894,166.

**\*This application was listed as accepted for filing in *South Carolina State Register Vol. 43, Issue 6* on **June 28, 2019**. Due to a typographical error in the published information, out of an abundance of caution, the Department of Health and Environmental Control is re-publishing the corrected application listing to ensure the public has received accurate information regarding this application.**

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from **August 23, 2019**. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-3495.

**Affecting Charleston County****\*\*Medical University Hospital Authority d/b/a MUSC Medical Center**

Addition of 29 general hospital beds for a total project cost of \$7,350,407.00.

**\*\*This application was listed as deemed complete in *South Carolina State Register Vol. 43, Issue 6* on **June 28, 2019**. Due to a typographical error in the published information, out of an abundance of caution, the Department of Health and Environmental Control is re-publishing the corrected application listing to ensure the public has received accurate information regarding this application.**

## 6 NOTICES

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### NOTICE OF GENERAL PUBLIC INTEREST

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.

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

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/or individuals listed below, please submit your comments in writing, no later than September 23, 2019 to:

Contractor Certification Program  
South Carolina Department of Health and Environmental Control  
Bureau of Land and Waste Management - Underground Storage Tank Program  
Attn: Michelle Dennison  
2600 Bull Street  
Columbia, SC 29201

The following company has applied for certification as Underground Storage Tank Site Rehabilitation Contractor:

#### **Class II**

**Environmental Restoration, LLC**  
**Attn: Mark Ruck**  
**1666 Fabick Drive**  
**Fenton, MO 63026**

**OFFICE OF THE ATTORNEY GENERAL  
CHAPTER 13**

Statutory Authority: 1976 Code Sections 35-1-101 et seq.

**Notice of Drafting:**

The Office of the Attorney General proposes to amend certain current regulations and promulgate additional regulations to implement the South Carolina Uniform Securities Act of 2005 and to reflect recent developments in securities regulation. Interested persons may submit comments to J. Louis Cote III, Assistant Attorney General, Office of the S.C. Attorney General, Securities Division, P.O. Box 11549, Columbia, SC 29211-1549. To be considered, comments must be received no later than 5:00 p.m. on September 23, 2019, the close of the drafting comment period.

**Synopsis:**

The Office of the Attorney General proposes to update, amend, and promulgate regulations to reflect recent developments in securities regulation.

Legislative review of the proposed regulations will be required.

**CLEMSON UNIVERSITY  
STATE LIVESTOCK-POULTRY HEALTH COMMISSION  
CHAPTER 27**

Statutory Authority: 1976 Code Sections 47-4-30 and 47-17-130

**Notice of Drafting:**

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection of meat and meat food products produced for intrastate commerce.

Interested parties should submit written comments to Dr. James T. Miller, Director, State Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, S. C. 29224-2406. To be considered, comments should be received no later than September 20, 2019, the close of the drafting comment period.

**Synopsis:**

This regulation is being promulgated to comply with the Federal Meat Inspection Act (21 USDA 661, Section 301) which establishes Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays and other similar requirements.

This regulation will not require legislative action.

## 8 DRAFTING NOTICES

**CLEMSON UNIVERSITY  
STATE LIVESTOCK-POULTRY HEALTH COMMISSION  
CHAPTER 27**

Statutory Authority: 1976 Code Sections 47-4-30, 47-19-30, and 47-19-170

### **Notice of Drafting:**

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce.

Interested parties should submit written comments to Dr. James T. Miller, Director, State Meat-Poultry Inspection Department, P.O. Box 102406, Columbia, S.C. 29224-2406. To be considered, comments should be received no later than September 20, 2019, the close of the drafting comment period.

### **Synopsis:**

This regulation is being promulgated to comply with the Poultry Products Inspection Act (21 USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays, and other similar requirements.

This regulation will not require legislative action.

**STATE BOARD OF EDUCATION  
CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-26-10, 59-26-30, and 59-26-40

### **Notice of Drafting:**

The Department of Education proposes to revise Regulation 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT). Interested persons may submit their comments in writing to Lilla Toal Mandsager, Director, Office of Educator Effectiveness and Leadership Development, Division of Educator, Community, and Federal Resources, 8301 Parklane Road, Columbia, SC 29223 or by e-mail to [lmandsager@ed.sc.gov](mailto:lmandsager@ed.sc.gov). To be considered, all comments must be received no later than 5:00 p.m. on September 23, 2019.

### **Synopsis:**

The 2016 updates to 59-25-410 and 59-25-420 established that teacher contracts must be issued by April 30 and returned by May 10. In R.43-205.1, the current May 1 due date for annual ADEPT plans falls during this busy contract window. Since 2016, the State Board of Education, has extended the ADEPT plan due date to June 1. Changing the ADEPT plan due date to June 1 permanently would allow districts to focus on contracts during April and then use that data to inform their ADEPT plans for the coming year.

Additionally, over the course of the past two years, the Office of Educator Effectiveness and Leadership Development has sought feedback from district ADEPT leads on two changes that support district flexibility in hiring teachers with experience out of state or in another district. The proposed changes would grant districts flexibility to offer out of state teachers that enter South Carolina with an initial certificate and more than one year of teaching experience the choice of an induction or an annual contract.

Legislative review is required.

**STATE BOARD OF EDUCATION**

**CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-5-60(1), 59-5-65, 59-25-110, 59-25-115, 59-26-40, and 59-26-85

**Notice of Drafting:**

The State Board of Education proposes to amend Regulation 43-53, Credential Classification.

Interested persons may submit their comments in writing to Ms. Mary Hipp, Director, Office of Educator Services, Division of Educator, Community, and Federal Resources, 8301 Parklane Road, Columbia, South Carolina 29223 or by e-mail to [mhipp@ed.sc.gov](mailto:mhipp@ed.sc.gov). To be considered, all comments must be received no later than 5:00 p.m. on September 23, 2019.

**Synopsis:**

State Board of Education Regulation 43-53 governs the requirements for teacher credential classifications. Amendments to R.43-53 will update types of credential classification and authorize the State Board of Education to develop guidelines for types and levels of credential classification.

Legislative review is required.

**STATE BOARD OF EDUCATION**

**CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-5-60, 59-5-65, and 59-25-110

**Notice of Drafting:**

The State Board of Education proposes to amend Regulation 43-55, Renewal of Credentials.

Interested persons may submit their comments in writing to Ms. Mary Hipp, Director, Office of Educator Services, Division of Educator, Community, and Federal Resources, 8301 Parklane Road, Columbia, South Carolina 29223 or by e-mail to [mhipp@ed.sc.gov](mailto:mhipp@ed.sc.gov). To be considered, all comments must be received no later than 5:00 p.m. on September 23, 2019.

**Synopsis:**

State Board of Education R.43-55 governs the requirements for educators to renew their South Carolina educator certificates. Amendments to R.43-55 will update references to the agency teacher certification office and eliminate the requirement of completing a graduate-level course for certificate renewal purposes for educators who do not hold a master's degree or higher.

Legislative review is required.



## 10 DRAFTING NOTICES

### DEPARTMENT OF INSURANCE CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-21-430

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

The Department of Insurance proposes to amend Regulation 69-80 that addresses insurers' and insurance groups' corporate governance structures, policies and practices reported to the director through an annual disclosure statement. Interested persons may submit written comments to Geoffrey Bonham, Associate General Counsel, South Carolina Department of Insurance, 1201 Main Street, Suite 1000 Columbia, SC 29201. For questions, call 803-737-6200 or email Gbonham@doi.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. September 23, 2019, the close of the drafting comment period.

#### **Synopsis:**

The Corporate Governance Annual Disclosure Regulation was passed in 2019 along with corresponding new legislation. Accordingly, some of the citations in the Regulation referencing the new legislation need to be renumbered to accurately correspond to the correct provision in the new legislation.

Proposed revisions will require legislative review.

### DEPARTMENT OF INSURANCE CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-9-200

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

The Department of Insurance proposes to revise Regulation 69-53, Credit for Reinsurance. Interested persons may submit written comments to Geoffrey Bonham, Associate General Counsel, South Carolina Department of Insurance, 1201 Main Street, Suite 1000 Columbia, SC 29201. For questions, call 803-737-6200 or email GBonham@doi.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. September 23, 2019, the close of the drafting comment period.

#### **Synopsis:**

The Department is proposing to make changes to Regulation 69-53 to be consistent with provisions of covered agreements with the European Union and United Kingdom with respect to reinsurance collateral agreements. These amendments are based upon the National Association of Insurance Commissioners (NAIC) Model Regulation which has been drafted to implement these changes.

Proposed revisions will require legislative review.

### DEPARTMENT OF INSURANCE CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-61-30

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

The Department of Insurance proposes to amend Regulation 69-5.1, Minimum Standards for the Readability of Commonly Purchased Insurance Policies. Interested persons may submit written comments to Geoffrey Bonham, Associate General Counsel, South Carolina Department of Insurance, 1201 Main Street, Suite 1000

Columbia, SC 29201. For questions, call 803-737-6200 or email gbonham@doi.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. September 23, 2019, the close of the drafting comment period.

**Synopsis:**

The Department is proposing to amend Regulation 69-5.1 to aid the Department in regulating Insurance Contracts. These amendments will allow insurers flexibility regarding the readability of insurance policies by giving insurers the option of providing either a certification that the form meets the Flesch Kincaid Score or providing the form and actual score.

Proposed revisions will require legislative review.

**DEPARTMENT OF INSURANCE  
CHAPTER 69**

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-71-21

**Notice of Drafting:**

The Department of Insurance proposes to add Regulation 69-77, Pharmacy Benefit Managers. Interested persons may submit written comments to Geoffrey Bonham, Associate General Counsel, South Carolina Department of Insurance, 1201 Main Street, Suite 1000 Columbia, SC 29201. For questions, call 803-737-6200 or email gbonham@doi.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. September 23, 2019, the close of the drafting comment period.

**Synopsis:**

The Department is proposing to add Regulation 69-77 to aid the Department in regulating Pharmacy Benefit Managers. These amendments will aid the Department's monitoring of Pharmacy Benefit Managers pursuant to legislation found at S.C. Code Ann. § 38-71-2200 et. seq. which became effective on May 16, 2019.

Proposed revisions will require legislative review.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BUILDING CODES COUNCIL  
CHAPTER 8**

Statutory Authority: 1976 Code Sections 6-9-40, 6-9-50, 6-9-55, and 40-1-70

**Notice of Drafting:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 9, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the International Fire Code. Interested persons may submit comments to the administrator for the Council, Molly Price, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, S.C. 29211-1329.

**Synopsis:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 9, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the International Fire Code. Specifically, the Council proposes to add the phrase "or equal to" in IFC Table 315.7.6(1) in R.8-904.

## 12 DRAFTING NOTICES

Legislative review is required.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BUILDING CODES COUNCIL  
CHAPTER 8**

Statutory Authority: 1976 Code Sections 6-9-40, 6-9-50, 6-9-55, and 40-1-70

### **Notice of Drafting:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 13, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the International Mechanical Code. Interested persons may submit comments to the administrator for the Council, Molly Price, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, S.C. 29211-1329.

### **Synopsis:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 13, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the International Mechanical Code. Specifically, the Council proposes to remove the word "substantial" appearing in R.8-1301.

Legislative review is required.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BUILDING CODES COUNCIL  
CHAPTER 8**

Statutory Authority: 1976 Code Sections 6-9-40, 6-9-50, 6-9-55, and 40-1-70

### **Notice of Drafting:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 12, to correct scrivener's errors in the modifications to the 2018 South Carolina Building Codes, the International Residential Code. Interested persons may submit comments to the administrator for the Council, Molly Price, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, S.C. 29211-1329.

### **Synopsis:**

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 12, to reflect modifications to the 2018 South Carolina Building Codes, the International Residential Code. Specifically, the Council proposes to remove the word substantial appearing in R.8-1229 and to add a missing section, number three in the series, on R.8-1232, that reads, "Not less than 10 feet (3048 mm) from mechanical air intake openings except where the exhaust opening is located not less than 3 feet (914 mm) above the air intake opening. Openings shall comply with Sections R303.5.2 and R303.6."

Legislative review is required.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BOARD OF PHARMACY  
CHAPTER 99**

Statutory Authority: 1976 Code Sections 40-1-70, 40-43-60(C), (D)(5) and (8), and 40-43-83(C)

**Notice of Drafting:**

The South Carolina Board of Pharmacy proposes promulgating a regulation to determine permit classifications of all permits and establish minimum standards for the permits. Interested persons may submit comments to Traci Collier, Administrator, South Carolina Board of Pharmacy, Post Office Box 11329, Columbia, S.C. 29211-1329.

**Synopsis:**

The South Carolina Board of Pharmacy proposes promulgating a regulation to determine permit classifications of all permits and establish minimum standards for the permits.

Legislative review is required.

**DEPARTMENT OF SOCIAL SERVICES  
CHAPTER 114  
Statutory Authority: 1976 Code Section 43-1-80**

**Notice of Drafting:**

The Department of Social Services proposes to amend regulations that address licensure of foster family homes. Interested persons may submit comments to Dawn Barton, Permanency Management Director, South Carolina Department of Social Services, P.O. Box 1520, Columbia, SC 29202. To be considered, comments must be received no later than 5:00 p.m. on Friday, September 6, 2019, the close of the drafting comment period.

**Synopsis:**

The Department of Social Services is charged with administering the provisions of the law relating to foster family homes and with making and promulgating such rules and regulations relating to licensing standards and other matters as may be necessary to carry out the purposes of the laws relating to foster family homes. The existing regulations regarding foster family homes (S.C. Code of Regulations Section 114-550) need to be amended. These proposed regulations set forth the requirements for foster family homes to be licensed by the Department and enable the Department to enforce licensing standards for foster family homes. These regulations help protect children residing in foster family homes.

Legislative review of this proposal will be required.

## 14 PROPOSED REGULATIONS

Document No. 4894  
**STATE FISCAL ACCOUNTABILITY AUTHORITY**  
**CHAPTER 19**

Statutory Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76

19-445. Consolidated Procurement Code.

### **Preamble:**

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement, management, and control of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). The Authority previously submitted proposed regulations for legislative approval on January 8, 2019, as Document 4861. Pursuant to Section 76 of 2019 Act No. 41, the Authority published interim regulations in the *State Register* on August 23, 2019. The Act also requires the Authority to publish proposed final regulations it will follow to implement changes; accordingly, these proposed regulations include the text of the previously published interim regulations. In addition, the proposed regulation will address various matters regarding Regulation 19-445 and procurement in general.

Notice of Drafting for the proposed amendments was published in the *State Register* on July 26, 2019.

### Section-by-Section Discussion

19-445.2000. State Procurement Regulations.

Sections A and B include two technical changes reflecting the Code Commissioner's reference to the authority's five-member board. No substantive change is intended. Section C adds two definitions — "certification" and "responsible procurement officer"— for clarity. *Note: these changes were previously submitted in Document 4861.*

Section B also includes an editorial change reflecting restructuring and the transfer of surplus property responsibilities to the Department of Administration. Definitions of "head of purchasing agency" and "certification" in section C have been revised to reflect changes made by Act No. 41. No substantive change is intended.

Former section E (Effective Date) has been deleted.

New section E is an interpretative regulation that reflects long standing administrative application of the Procurement Code and provides concise, accessible, guidance on the Code's application. Item 1 recognizes that statutory schemes other than the Procurement Code may govern a transaction. Item 2 recognizes that application of the Code doesn't depend on how contracts are documented, but what the transaction actually accomplishes. Item 3 explains the Code's application revenue generating contracts. Item 4 effectively applies Item 3 in the context of financed construction acquisitions. Item 5 explains how the Procurement Code relates to acquisitions involving an interest in real property.

Most procurements must be advertised. New Section F explains the minimum contents of the advertisement and explains how it applies to the public notices required by Act No. 41 for sole source and emergency procurements.

19-445.2010. Disclosure of Procurement Information.

Deletion of section A reflects the enactment of § 11-35-410(F) by Act No. 41. Section D is amended to reflect the addition of § 11-35-1535 by Act No. 41. Section E is modified to reflect existing business practices; agency staff participating in activities such as negotiations or proposal evaluation must sign an acknowledgement of their obligations under rules such as the State Ethics Act. Section E also implements new § 11-35-1535.

19-445.2020. Certification.

Section A eliminates “consulting services” as a category for certification and clarifies that certification for construction includes construction related professional services. Revisions to section A(3) and renumbered section B implement changes made to § 11-35-1210 by Act No. 41. Specifically, these changes identify the preconditions for the delegation of authority by the Director of the Division of Procurement Services. Existing section B has been renumbered as section D with non-substantive editorial changes. *Note: Section A(3) and renumbered section C include editorial changes reflecting restructuring that were previously submitted in Document 4861.*

19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.

These changes are technical and merely restate existing law. The text proposed to be added to current paragraph (5) is taken verbatim from § 11-35-1520(3). Revised R.19-445.2095, *post*, makes this subsection equally applicable to requests for proposals.

*Note: these revisions, with non-substantive editorial changes, were previously submitted in Document 4861.*

19-445.2042. Pre-Bid Conferences.

Section D accommodates out-of-town prospective contractors by encouraging agencies to allow participation in pre-bid conferences by electronic means.

19-445.2045. Receipt, Safeguarding, and Disposition of Bids.

Act No. 41 amended § 11-35-410(C) to require regulations directing the disposition of responses when no award is made. R.19-445.2045C accomplishes this. The regulation reflects current practice of the Division of Procurement Services and is based in part on 2002 ABA Model Procurement Regulation R3-301.05.

*Note: certain of these changes were previously submitted in Document 4861.*

19-445.2065. Rejection of Bids.

Proposed R.19-445.2045C eliminates the need for section D.

*Note: these changes were previously submitted in Document 4861.*

19-445.2080. Bid Reductions.

The existing text of R.19-445.2080 is removed to reflect the repeal of § 11-35-1520(8).

The new text of R.19-445.2080 is added to confirm the authority of procurement staff to accept a voluntary reduction in price from a low bidder. This change dovetails with the repeal by Act 41 of the 5th sentence of §11-35-1520(10), which addressed negotiations after a competitive sealed bid, a topic which is generally addressed by § 11-35-1540.

19-445.2090. Award.

Section B is modified to reflect changes Act No. 41 made to § 11-35-1520(10) regarding notice of a revised posting date.

19-445.2095. Competitive Sealed Proposals.

R.19-445-2095A clarifies that the reasonable notice required by the Consolidated Procurement Code and current regulations for preparation of bids also applies to competitive sealed proposals.

R.19-445.2095B and -2095C make technical changes to the current sections.

*Note: these changes were previously submitted in Document 4861.*

R.19-445-2095E is modified to reflect Act No. 41’s repeal of § 11-35-1520(8).

New section K applies to the process of negotiations the same set of controls that apply to the process of conducting of discussions (see R.19-445.2095I(2)) and provides for the identification of negotiation objectives before initiating negotiations.

## 16 PROPOSED REGULATIONS

Instructions: Document 4861, which has been submitted to the General Assembly but not approved, includes a section K of R.19-445.2095 with different text. If the General Assembly approves Document 4861 after its approval, if any, of this proposed regulation, the text herein should appear in the Code of Regulations.

New section L incorporates notice provisions in R.19-445.2090(B), applicable when posting an award on competitive sealed bids is delayed, to like delays in awarding on competitive sealed proposals.

19-445.2097. Rejection of Proposals.

R.19-445.2095B makes R.19-445.2045C applicable to RFPs, thus eliminating the need for section D.

19-445.2099. Competitive Negotiations.

This regulation is completely new. It implements the addition of § 11-35-1535 by Act No. 41, which authorizes the use of competitive negotiations as a source selection procedure. The regulation addresses post-opening amendments to the solicitation; evaluation factors; evaluation process; exchanges with offerors, including clarifications and negotiations; limitations on exchanges; tradeoffs, and the award process.

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

The changes to this regulation implement the changes made to § 11-35-1550 by Act No. 41. In large measure, this regulation explains, but does not modify, the processes outlined in § 11-35-1550. Paragraph A(6) requires that notice of an award must be communicated to all bidders if the small purchase exceeds \$50,000.

19-445.2105. Sole Source Procurements.

Changes to section C clarify and simplify requirements for a written determination, and incorporate the new notice requirements in Act No. 41. Section D makes clear that statutory requirements for competitive procurements apply likewise to sole source contracts.

19-445.2110. Emergency Procurements.

New section F incorporates the notice requirements in Act No. 41.

19-445.2115. Information Technology Procurements.

The repeal of sections A and B of R.19-445.2115 reflect the repeal of § 11-35-1580 by Act No. 41.

19-445.2120. Cost or Pricing Data.

Changes to this regulation help implement the streamlined contracting procedures available for commercial products.

19-445.2125. Responsibility of Bidders and Offerors.

New subsection D(2) implements changes in Act No. 41 to § 11-35-1529, governing reverse auctions.

19-445.2127. Organizational Conflicts of Interest.

Act No. 41 adds § 11-35-1840, which expressly provides for the adoption of regulations dealing with organizational conflicts of interest. This is a new regulation.

Outside of construction, the State's procurement laws do not currently address organizational conflicts of interest. An organizational conflict of interest (OCI) may prevent a contractor from providing impartial advice or service to the government; or it may create an unfair competitive advantage favoring one offeror over others. An offeror with a significant OCI may be disqualified from award of a contract, or may be subject to restrictions on additional work to mitigate the conflict. Since an OCI usually exists without any wrongdoing by an offeror or contractor, it is not a matter of responsibility. Similarly, since a contractor with an OCI may be positioned to perform exactly as the State requires, it is also not a matter of responsiveness.

The proposed new regulation provides general policy concepts and guidance on the issue of OCIs and leaves to the chief procurement officers the task of developing specific procedures to implement those concepts.

R.19-445.2127A defines OCI and describes its potentially deleterious impact on the acquisition process. It underscores the need for analysis to identify potential conflicts and to plan for its mitigation in advance of award. The importance of judgment and common sense is emphasized.

R.19-445.2127B identifies systems engineering and technical direction as circumstances where OCI can create a performance risk for the State, as well as a potential unfair competitive advantage. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this contractor should not be in a position to make decisions favoring its own products or capabilities.

R.19-445.2127C identifies another situation where an OCI should be disqualifying for subsequent work: where the State's contractor furnishes specifications or a statement of work. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the State can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of contracts.

R.19-445.2127D states the common-sense rule that a contractor should not be allowed to perform work under a contract where it assisted the agency in evaluating and awarding that contract.

R.19-445.2127E outlines the procurement officer's responsibilities regarding OCI, and emphasizes the need to address OCI early in the acquisition process. It also establishes a default of award to the most advantageous offeror, notwithstanding an OCI, unless the OCI cannot be avoided or mitigated. In the latter case, the procurement officer must provide the conflicted offeror an opportunity to respond.

R.19-445.2127F permits an agency, within its certification authority, to waive an OCI in response to a written request, detailing the extent of the conflict and reasons for its waiver.

Finally, R.19-445.2127G authorizes the chief procurement officers to develop policies and procedures to detect OCI and techniques to avoid or mitigate them.

#### 19-445.2135. Conditions for Use of Multi-term Contracts.

Revisions to this regulation clarify existing practice for approving contracts with extended terms, and implement the express requirement in amended § 11-35-2030 that approval must be had prior to issuing the solicitation.

#### 19-445.2141. Commercial Products.

Act No 41 expresses a legislative finding "that acquisition policies that more closely resemble those of the commercial marketplace, encourage the acquisition of commercial items, and, where possible, allow use of terms and conditions accepted in the marketplace, will promote efficiency and economy in contracting and avoid unnecessary burdens for agencies and contractors." The Act defines "commercial product" and "commercially available off-the-shelf products," or COTS products (§§ 11-35-1410(1) and (2)). It authorizes streamlined procedures for purchasing COTS products up to \$100,000 (§ 11-35-1550(2)(b)). And it exempts sellers of COTS products from compliance with certain laws unrelated to competitive purchasing (§ 11-35-2040).

Procurement regulations have long emphasized the State's preference for commercially available products (R.19-445.2140D). New R.19-445.2141 expands on that policy and provides clarity and guidance to implement the legislature's COTS enactments.

Section A of the regulation restates and clarifies the definitions of COTS product and commercial product.

Section B underscores the importance of market research in developing a purchasing strategy for COTS products.

Section C explains how the commercial marketplace may effectively establish price reasonableness for COTS products.

Section D expands on instructions for COTS-friendly specifications already expressed in R.19-445.2140D.

Section E explains simplified procedures for buying COTS products, including considerations to eliminate unnecessary restrictions on vendors who wish to sell to the State.

Finally, R.19-445.2141H authorizes the chief procurement officers to develop guidance and forms implementing the statutory and regulatory scheme.



## 18 PROPOSED REGULATIONS

19-445.2143. Contract clauses and administration.

Act No. 41 includes new § 11-35-2050, which expressly makes unenforceable against the State certain specific contract terms that are contrary to law. It also includes new § 11-35-1610, prohibiting contract changes inconsistent with the Code or ensuing regulations. This new regulation implements those statutory changes.

Section A states long-standing legal precedent that contracts formed pursuant to the Consolidated Procurement Code are deemed to include all its mandatory provisions.

Section B explains and implements § 11-35-2050.

Section C implements § 11-35-1610 by defining the material change doctrine and declaring that such changes are inconsistent with the Code's underlying policies. The Procurement Review Panel expressly recognized this doctrine in *IN RE: South Carolina Patients' Compensation Fund v. Modus21, LLC*, Case No. 2013-5.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

Revisions to R.19-445.2145 are all conforming changes reflecting Act No. 41's amendments.

Section C changes reflect the Act's revised thresholds for required bonds.

Section H reflects the Act's repeal of construction indefinite delivery contracts from § 11-35-3310 and its addition of task order contracts in § 11-35-3320.

19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

Technical change only. No substantive change intended.

*Note: these changes were previously submitted in Document 4861.*

19-445.3000. School District Procurement Codes; Model.

Technical change only. No substantive change intended.

*Note: these changes were previously submitted in Document 4861.*

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The following sections of Regulation 19-445 are modified as provided below in the text. All other items and sections remain unchanged.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the S.C. Code, as amended, such hearing will be held on October 15, 2019, at 10:00 AM in Room 252 of the Edgar A. Brown Building, State House Grounds, Columbia, South Carolina. Persons desiring to make oral comment at the hearing are asked to provide written copies of their presentation for the record. If a qualifying request pursuant to Section 1-23-110(A)(3) is not timely received, the hearing will be canceled.

Written comments, requests for the text of the proposed amendments or any other information, and any requests for a public hearing, should be submitted to Office of General Counsel, 1201 Main Street, Suite 420, Columbia, S.C. 29201 or to [regulations@mmo.state.sc.us](mailto:regulations@mmo.state.sc.us), on or before 5:00 PM on September 24, 2019. Copies of the text of the proposed amendments for public notice and comment are available at <https://procurement.sc.gov/review-period-draft>.

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

No additional state funding is requested. The State Fiscal Accountability Authority estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 19-445.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: South Carolina Consolidated Procurement Code.

Purpose: These regulations are proposed to clarify and improve the procedures used in procurement.

Legal Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76.

Plan for Implementation: The proposed amendments would be incorporated within R.19-445 upon publication in the State Register as a final regulation. The proposed amendments will be implemented in the same manner in which the existing regulation is implemented. As part of its routine training program, the State Fiscal Accountability Authority will offer training classes to inform government officials regarding the impact of the proposed regulations.

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

As reflected in Section 11-35-20, the Consolidated Procurement Code was enacted to consolidate, clarify, and modernize the law governing procurement in this State and to permit the continued development of explicit and thoroughly considered procurement policies and practices. These regulations are designed to achieve those purposes and policies, consistent with best practices developed through experience. Accordingly, the State Fiscal Accountability Authority determined that the proposed amendments to the state's procurement regulations are needed and reasonable.

**DETERMINATION OF COSTS AND BENEFITS:**

There will be no increased cost to the State or its political subdivisions, nor will the proposed amendments result in any increased cost to the business community. The proposed amendments will benefit covered governmental entities by enhancing the integrity of the process, improving efficiency, and allowing sound procurement practices that enable government to acquire better value for the taxpayer's dollars.

**UNCERTAINTIES OF ESTIMATES:**

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

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

The proposed regulations have no effect on the environment or on public health.

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

There will be no detrimental effect on the environment or public health if the regulations are not implemented.

**Statement of Rationale:**

The Consolidated Procurement Code expressly contemplates the continued development of explicit and thoroughly considered procurement policies and practices. The proposed changes are needed to accommodate developments in the law and in best practices for government procurement, and to further consolidate, clarify, and modernize the law governing procurement in this State. S.C. Code Section 11-35-20(d).

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### Text:

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

Document No. 4885  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTER 61  
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-69. Classified Waters.

### Preamble:

R.61-69 establishes the State's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department of Health and Environmental Control ("Department") proposes amending R.61-69 to clarify and correct, as needed, waterbody names, counties, classes, and descriptions. The Department also proposes stylistic changes for overall improvement of the text of the regulation. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

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

Amend 61.69.H. to correct the description for portions of Ashley River in Charleston and Dorchester Counties.

Amend 61-69.H. to correct the class for portions of Atlantic Intracoastal Waterway in Georgetown County.

Amend 61-69.H. to correct the description for portions of Bartons Branch in Georgetown and Williamsburg counties.

Amend 61-69.H. to remove Bear Creek from the list of classified waters. Bear Creek is currently listed as that portion of the creek in Oconee County from the State line to Lake Jocassee, however Lake Jocassee is impounded beyond the State line. Therefore, the listing should be removed.

Amend 61-69.H. to remove Bearcamp Creek from the list of classified waters. Bearcamp Creek is currently listed as that portion of the creek in Oconee County from the State line to Lake Jocassee, however Lake Jocassee is impounded beyond the State line. Therefore, the listing should be removed.

Amend 61-69.H. to correct the counties for portions of Black Creek in Chesterfield, Darlington, and Florence Counties.

Amend 61.69.H. to correct the name and counties for portions of Black Creek in Georgetown County.

Amend 61.69.H. to correct the county and description for portions of Black River in Georgetown County.

Amend 61-69.H. to add Boggy Swamp to the list of classified waters in Georgetown County. This portion of the river was previously listed as Sampit River.

Amend 61-69.H. to correct the description for portions of Buckhorn Creek in Greenville County.

Amend 61-69.H. to add Cane Creek to the list of classified waters in Pickens County. This creek was previously listed as Crane Creek.

Amend 61-69.H. to correct the description for portions of Carrick Creek in Pickens County.

Amend 61-69.H. to correct the name for portions of Chowan Creek in Beaufort County.

Amend 61-69.H. to correct the description for portions of Clark Creek in York County.

Amend 61-69.H. to correct the description for portions of Corbin Creek in Oconee County.

Amend 61-69.H. to correct the description for portions of Cox Camp Creek in Greenville County.

Amend 61-69.H. to correct the name for portions of Crabhaul Creek in Georgetown County.

Amend 61-69.H. to remove Crane Creek and replace it with Cane Creek in Pickens County.

Amend 61-69.H. to correct the name for portions of Devils Fork Creek in Oconee County.

Amend 61-69.H. to correct the description for portions of Edisto River (Main Stem) in Orangeburg, Bamberg, Dorchester, Colleton, and Charleston Counties.

Amend 61-69.H. to add Filbin Creek to the list of classified waters in Charleston County.

Amend 61-69.H. to correct the name and description for portions of Grambling Creek in Orangeburg County.

Amend 61-69.H. to add Great Pee Dee River to the list of classified waters in Chesterfield, Dillon, Darlington, Florence, Marion, Marlboro, Williamsburg, and Georgetown Counties. This river was previously listed as Pee Dee River.

Amend 61-69.H. to correct the description for portions of Howard Creek in Oconee County.

Amend 61-69.H. to correct the name, class, and description for portions of Johnsons Swamp in Georgetown and Williamsburg Counties.

Amend 61-69.H. to correct the name and county for portions of Lake Swamp in Florence County.

Amend 61-69.H. to correct the description for portions of Limber Pole Creek in Oconee County.

Amend 61-69.H. to correct the name for Little Lynches River in Kershaw and Lancaster Counties.

Amend 61-69.H. to correct the name and county for portions of Lynches Lake in Florence County.

Amend 61-69.H. to correct the description for portions of Milton Creek in Charleston County.

Amend 61-69.H. to correct the name for portions of Mud Creek in Charleston County.

Amend 61-69.H. to correct the name, county, class, and description for portions of Mud River in Jasper County.

Amend 61-69.H. to correct the description for portions of Muddy Creek in Florence and Williamsburg Counties.

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Amend 61-69.H. to remove Pee Dee River and replace it with Great Pee Dee River in Chesterfield, Dillon, Darlington, Florence, Marion, Marlboro, Williamsburg, and Georgetown Counties.

Amend 61-69.H. to remove Rock Branch and replace it with Rocky Branch in Greenville County.

Amend 61-69.H. to correct the description for portions of Rocky Bluff Swamp in Lee and Sumter Counties.

Amend 61-69.H. to correct the name for portions of Running Lake Creek in Richland County.

Amend 61-69.H. to correct the name and description for portions of Russell Creek in Charleston County.

Amend 61-69.H. to correct the description for portions of Salkehatchie River in Allendale, Bamberg, Barnwell, Colleton, and Hampton Counties.

Amend 61-69.H. to remove portions of Salkehatchie River in Beaufort, Colleton, and Hampton Counties. This portion of the river is already correctly listed as Combahee River. Therefore, this listing should be removed.

Amend 61-69.H. to remove portions of Sampit River in Georgetown County. This portion of the river is Boggy Swamp. Therefore, this listing should be removed.

Amend 61-69.H. to correct the description for portions of the Sampit River in Georgetown County.

Amend 61-69.H. to correct the description for portions of Sampson Island Creek in Colleton County.

Amend 61-69.H. to correct the description for portions of Sand Creek in Laurens County.

Amend 61-69.H. to correct the county for portions of Savannah River in Anderson County.

Amend 61-69.H. to correct the description for portions of Sixty Bass Creek in Georgetown County.

Amend 61-69.H. to correct the county for portions of South Pacolet River in Greenville County.

Amend 61-69.H. to correct the name, class, and description for portions of Summerhouse Branch in Georgetown and Williamsburg Counties.

Amend 61-69.H. to correct the description for portions of Swaford Creek in Oconee County.

Amend 61-69.H. to correct the description for portions of Tom Point Creek in Charleston County.

Amend 61-69.H. to correct the name and description for portions of Toms Creek in Lexington County.

Amend 61-69.H. to correct the description for portions of Toogoodoo Creek in Charleston County.

Amend 61-69.H. to correct the description for portions of White Oak Creek in Marion County.

Amend 61-69.H. to correct the description for portions of Whooping Island Creek in Charleston County.

Amend 61-69.H. to correct the description for portions of Willow Swamp in Orangeburg County.

Amend 61-69.H. to correct the county and description for portions of Zekial Creek in Cherokee and Spartanburg Counties.

Amend 61-69.H. to remove each instance of mg/l and replace it with mg/L.

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

Interested persons may submit comment(s) on the proposed amendment to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 23, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendment during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

**Preliminary Fiscal Impact Statement:**

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115 (c)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-69, Classified Waters.

Purpose: Proposed amendment of R.61-69 will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State's water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the federal Clean Water Act ("CWA").

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

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

R.61-69 establishes the State's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department's proposed amendments to R.61-69 clarify and correct, as needed, waterbody names, counties, classes, and descriptions.

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### DETERMINATION OF COSTS AND BENEFITS:

Existing staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

Overall cost impact to the State's political subdivisions or the regulated community as a whole is not likely to be significant. Existing standards would have incurred similar cost. Furthermore, the standards required under the amendments will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

### UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal.

### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The proposed amendments to R.61-69 seek to correct and clarify portions of the list of classified waters in order to provide citizens a more accurate representation of the waters of the State.

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

Failure by the Department to incorporate appropriate revisions to the list of classified waters in R.61-69 will allow an inaccurate representation of the State's waters to persist. This list is the only repository of the State's site-specific water quality standards and is used as the basis for National Pollutant Discharge Elimination System ("NPDES") permit decisions. If not corrected, the inaccuracies in the existing regulation may lead to unnecessary contamination of the waters of the State with detrimental effects on the health of flora and fauna, as well as the citizens of South Carolina.

### Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

R.61-69 establishes the State's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department proposes amending R.61-69 to clarify and correct, as needed, waterbody names, counties, classes, and descriptions.

### Text:

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

Document No. 4886

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
CHAPTER 61**

Statutory Authority: 1976 Code Sections 44-1-60, 44-1-65, 46-45-80, and 48-1-10 et seq.

61-43. Standards for the Permitting of Agricultural Animal Facilities.

**Preamble:**

The Department of Health and Environmental Control (“Department”) proposes amending R.61-43, Standards for the Permitting of Agricultural Animal Facilities, to incorporate Act 139 of 2018, which amended S.C. Code Sections 44-1-60 and 46-45-80 and added Section 44-1-65. S.C. Code Section 44-1-65 establishes specific requirements for review and appeal of decisions by the Department regarding the permitting, licensing, certification, or other approval of poultry and other animal facilities, except for swine facilities. Section 44-1-60 sets procedures for reviewing permits for poultry and other animal facilities, except swine facilities, relating to appeals from Department decisions giving rise to contested cases. Section 46-45-80 includes provisions regarding setback distances for poultry and other animal facilities, except swine facilities, so as to prohibit requiring additional setback distances if established distances are achieved, allow waiver of the established setback distances in certain circumstances, and other purposes.

The Department also proposes amendments to correct typographical errors, citation errors, and other errors and omissions that have come to the Department’s attention. These include correcting form references and regulation references, updating definitions, adding and/or omitting language and punctuation, clarification, reorganizing sections for consistency, and other such changes. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these amendments.

The Department published a Notice of Drafting in the February 22, 2019, *South Carolina State Register*.

Section-by-Section Discussion of Proposed Amendments:

Part 50 - general definitions, adding, deleting, updating, clarifying, deleted codification throughout the definitions.

Part 100

Section 100.10 – amended title and language throughout for clarity and consistency.

Section 100.20 – recodified to reflect proposed changes. Amended for clarity and consistency.

Section 100.30 – amended for clarity and consistency.

Section 100.40 – recodified to reflect proposed amendments and removed references to repealed regulations.

Section 100.50 – amended for clarity and consistency.

Section 100.60 – amended method and time requirements of public notice. Amended public hearing requirement. Amended for clarity and consistency.

Section 100.70 – recodified to reflect proposed changes. Amended for clarity and consistency and removed variability of setbacks for consistency throughout the regulations.

Section 100.80 – recodified to reflect proposed changes. Re-organized for clarity and consistency.

Section 100.90 – amended for clarity and consistency.

Section 100.100 – amended for clarity and consistency. Added language for ease of use. Amended for clarity and consistency and removed variability of setbacks for consistency throughout the regulations.

Section 100.110 – amended for clarity and consistency.

Section 100.120 – amended for clarity and consistency.

Section 100.130 – added language for phasing out option for burial. Amended for clarity.

Section 100.140 – amended for clarity and consistency. Relocated 100.140.J to 100.100.B.23 for clarity and consistency.



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Section 100.150 – removed limitations of odor interpretation. Amended for clarity and consistency. Recodified.  
Section 100.160 – amended for clarity and consistency.  
Section 100.170 – amended for clarity.  
Section 100.180 – amended for consistency.  
Section 100.190 – amended for clarity, consistency and content.  
Section 100.200 – amended for consistency.  
Section 200.10 – amended for clarity, consistency and content.  
Section 200.20 – amended for consistency.  
Section 200.30 – amended for clarity.  
Section 200.40 – content removed due to statute. Amended for content and consistency. Recodified.  
Section 200.50 – amended for clarity, consistency and content.  
Section 200.60 – amended for clarity, consistency and content. Amended for cost savings.  
Section 200.70 – amended due to statute. Amended for clarity, consistency and content.  
Section 200.80 – amended for clarity, consistency and content. Removed due to statute. Recodified.  
Section 200.90 – amended for clarity, consistency and content.  
Section 200.100 – amended for clarity, consistency and content.  
Section 200.110 – amended for clarity.  
Section 200.120 – amended for clarity and content.  
Section 200.130 – amended for clarity and content. Recodified.  
Section 200.140 – amended for consistency. Relocated 200.140.J to 200.100.B.23 for consistency.  
Section 200.150 – amended for clarity, consistency and content. Recodified.  
Section 200.160 – amended for clarity, consistency and content.  
Section 200.180 – amended for consistency.  
Section 200.190 – amended due to statute. Amended clarity and consistency.  
Section 300.30 – amended for consistency.  
Section 300.40 – amended for clarity, consistency and content.  
Section 300.50 – amended for clarity and consistency.  
Section 400.10 – amended for clarity, consistency and content.  
Section 400.20 – amended for clarity and consistency.  
Section 400.30 – amended due to regulation no longer exist. Amended for content. Recodified.  
Section 400.40 – amended for clarity, consistency and content.  
Section 400.50 – amended for clarity, consistency and cost savings.  
Section 400.60 – amended for clarity, consistency and content. Recodified.  
Section 400.70 – amended for consistency.  
Section 400.80 – amended for clarity, consistency and content. Recodified.  
Section 400.90 – amended for clarity and consistency.  
Section 400.100 – amended for clarity, consistency and content.  
Section 400.110 – amended for consistency.  
Section 400.120 – amended for consistency and content. Recodified.  
Section 500.10 – amended for content.  
Section 500.20 – amended for content. Recodified.  
Section 500.50 – amended for consistency and content.

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

Interested persons may submit comment(s) on the proposed amendment to Chuck Williams of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; williacj@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 23, 2019, the close of the comment period. Comments received during the write-in public comment period by the deadline set forth above will be submitted to the S.C. Board of Health and Environmental Control (“Board”) in a Summary of Public Comments and Department Responses for the Board’s consideration at the public hearing.

The Board will conduct a public hearing on the proposed amendments during its December 12, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

**Preliminary Fiscal Impact Statement:**

The proposed amendments have no substantial fiscal or economic impact on the state or its political subdivisions. There are no anticipated additional costs by the Department or state government due to any requirements of this regulation.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-43, Standards for the Permitting of Agricultural Animal Facilities.

Purpose: The Department proposes amending R.61-43, Standards for the Permitting of Agricultural Animal Facilities, to incorporate statutory changes made by the General Assembly's passage of Act 139 of 2018 and to correct typographical errors, citation errors, and other errors and omissions. These amendments expand and clarify definitions applicable to agricultural animal facility regulations and standards, streamline permitting options, clarify reporting requirements, identify the Department's consistent noticing method, improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-43.

Legal Authority: 1976 Code Sections 44-1-60, 44-1-65, 46-45-80, and 48-1-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

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

The Department proposes amending R.61-43 to adopt the changes of Act 139 that amended S.C. Code Sections 44-1-60 and 46-45-80 and added Section 44-1-65. S.C. Code Section 44-1-65 establishes specific requirements for review and appeal of decisions by the Department regarding the permitting, licensing, certification, or other approval of poultry and other animal facilities, except for swine facilities. Section 44-1-60 sets procedures for reviewing permits for poultry and other animal facilities, except swine facilities, relating to appeals from Department decisions giving rise to contested cases. Section 46-45-80 includes provisions regarding setback distances for poultry and other animal facilities, except swine facilities, so as to prohibit requiring additional setback distances if established distances are achieved, allow waiver of the established setback distances in certain circumstances, and other purposes. Since the above-referenced statutory provisions added and removed

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requirements currently contained in the R.61-43, *Standards for the Permitting of Agricultural Animal Facilities*, the regulation should be amended to reflect these changes.

The Department also proposes amendments to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention. These include correcting form references and regulation references, updating definitions, adding and/or omitting language and punctuation, clarification, reorganizing sections for consistency, and other such changes.

The proposed amendments seek to simplify, clarify, and correct elements of the Department's agriculture animal facility permitting regulations while supporting the Department's goal of promoting and protecting the health of the public and the environment in an efficient and effective manner.

### DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate an increase in costs to the state, its political subdivisions, or the regulated community resulting from these proposed revisions. Proposed changes to the public notice process will be a cost saving measure to the applicants and the Department. The proposed changes are meant to create a more usable and functional regulation that will assist the regulated community and the citizens of South Carolina.

### UNCERTAINTIES OF ESTIMATES:

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

### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These proposed amendments seek to provide continued state-focused protection of the environment and public health.

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

If these proposed revisions are not implemented, R.61-43 will not include the policy initiatives advanced by Act 139.

### Statement of Rationale:

The Department proposes amending R.61-43, *Standards for the Permitting of Agricultural Animal Facilities*, to incorporate statutory changes made by the General Assembly's passage of Act 139 of 2018 and to correct typographical errors, citation errors, and other errors and omissions. These amendments expand and clarify definitions applicable to agricultural animal facility regulations and standards, streamline permitting options, clarify reporting requirements, identify the Department's consistent noticing method, improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-43.

### Text:

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

Document No. 4887  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 61**

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

61-68. Water Classifications and Standards.

**Preamble:**

R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected, general rules and water quality criteria to protect classified and existing water uses, and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal Clean Water Act (“CWA”) requires South Carolina’s water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency’s updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department of Health and Environmental Control (“Department”) proposes amending R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department proposes to adopt a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA. The Department proposes stylistic changes for overall improvement of the text of the regulation. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

Section-by-Section Discussion of Proposed Amendments:

Amend 61-68.E.14.c(10) to change the daily maximum enterococci NPDES permit effluent limitation from 501 MPN/100 ml to 104 MPN/100 ml for the protection of uses in Class SB saltwaters.

Add 61-68.E.14.d(7) to include human health recreational ambient water quality criteria for microcystins in freshwater, and to specify when the Department would issue a swimming advisory.

Add 61-68.E.14.d(8) to specify when the Department would list a surface waterbody as impaired for recreational uses due to microcystins.

Add 61-68.E.14.d(9) to include human health recreational ambient water quality criteria for cylindrospermopsin in freshwater, and to specify when the Department would issue a swimming advisory.

Add 61-68.E.14.d(10) to specify when the Department would list a surface waterbody as impaired for recreational uses due to cylindrospermopsin.

Amend 61-68.G.9. and 10. to include standards for both microcystins and cylindrospermopsin to protect the uses of Natural and Put, Grow, and Take trout waters and Freshwaters.

Amend 61-68.G.13. to correct a typographical error and to change the daily maximum enterococci standard from 501 MPN/100 ml to 104 MPN/100 ml for the protection of uses in Class SB saltwaters.

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Amend 61-68 Appendix: Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health “Priority Toxic Pollutants” table and footnotes to correct typographical errors and to adopt a revised standard for aquatic life ambient water quality criteria for cadmium.

Amend 61-68 Appendix: Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health “Priority Toxic Pollutants” table to correct a typographical error for Dimethyl Phthalate.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Non Priority Pollutants” table to adopt a standard for aquatic life ambient water quality criteria for carbaryl.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Attachment 2 – Parameters for Calculating Hardness-Dependent Criteria” to adopt a revised standard for aquatic life ambient water quality criteria for cadmium and to add a footnote.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, to add “Attachment 4 - Calculation of the Sample Specific Freshwater Acute and Chronic Criterion for Metals.”

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

Interested persons may submit comment(s) on the proposed amendment to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 23, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendment during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

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

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments.

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

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-68, Water Classifications and Standards.

Purpose: Proposed amendments of R.61-68, as the triennial review, will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State’s water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the federal CWA.

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

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

Section 303(c)(2)(B) of the federal CWA requires South Carolina’s water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency’s updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department proposes amending R.61-68 to adopt these criteria as the Department deemed necessary to comply with federal regulatory recommendations and revisions.

**DETERMINATION OF COSTS AND BENEFITS:**

Existing Department staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

Overall cost impact to the State’s political subdivisions and regulated community is not likely to be significant. Existing standards would have incurred similar cost. Furthermore, standards required under the amendments will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

**UNCERTAINTIES OF ESTIMATES:**

The uncertainties associated with the estimation of benefits and burdens are minimal to moderate, due to possible differences in the extent to which Municipal Separate Storm Sewer Systems (“MS4s”) currently meet the lower standard.

**EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:**

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The proposed amendments to R.61-68 seek to promote and protect aquatic life and human health by the regulation of pollutants into waters of the State.

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

Failure by the Department to incorporate appropriately protective water quality standards in R.61-68 that are the basis for issuance of National Pollutant Discharge Elimination System (“NPDES”) permits, stormwater permits, wasteload and load allocations, groundwater remediation plans, and multiple other program areas will lead to contamination of the waters of the State with detrimental effects on the health of flora and fauna in the State, as well as the citizens of South Carolina.

**Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

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R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal CWA requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department proposes amending R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department proposes to adopt a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

### **Text:**

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

Document No. 4888  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTER 61  
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-9. Water Pollution Control Permits.

### **Preamble:**

The Department of Health and Environmental Control ("Department") proposes amending R.61-9 to adopt portions of three federal Clean Water Act rules promulgated by the United States Environmental Protection Agency ("EPA") required for State program implementation. These federal regulations include National Pollutant Discharge Elimination System ("NPDES") Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting (79 FR 49001, August 19, 2014), NPDES Electronic Reporting Rule (80 FR 64063, October 22, 2015), and NPDES Applications and Program Updates (84 FR 3324, February 12, 2019). Incorporating these rules into R.61-9 modifies existing NPDES regulations, which clarifies that permit applicants must use "sufficiently sensitive" analytical test methods, requires the electronic reporting and sharing of NPDES program information, and revises NPDES application and public notice requirements consistent with electronic reporting. The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department proposes these amendments for compliance with federal law.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

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

Amend 61-9 Table of Contents to add 61-9.3 and 61-9.127.

Add 61-9.3 in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.2 to correct a typographical error in the definition of "Discharge of a pollutant."

Amend 61-9.122.2 to add, in alphabetical order, definitions for “Pesticide discharges” and “Pesticide residue” in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(a) in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(e) in accordance with NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting.

Amend 61-9.122.21(f) in accordance with NPDES Applications and Program Updates.

Add 61-9.122.21(g)(7)(ix) in accordance with NPDES Applications and Program Updates.

Amend the following sections to add an electronic mail requirement in accordance with NPDES Applications and Program Updates:

- 61-9.122.21(j)(1)(ii)
- 61-9.122.21(j)(1)(viii)(D)(2)
- 61-9.122.21(j)(1)(viii)(D)(3)
- 61-9.122.21(j)(9)
- 61-9.122.21(q)(2)(i)
- 61-9.122.21(q)(8)(vi)
- 61-9.122.21(q)(9)(iii)(D)
- 61-9.122.21(q)(9)(iii)(E)
- 61-9.122.21(q)(9)(iv)(A)
- 61-9.122.21(q)(10)(ii)(A)
- 61-9.122.21(q)(10)(iii)(K)(1)
- 61-9.122.21(q)(11)(ii)(A)
- 61-9.122.21(q)(12)(i)
- 61-9.122.21(q)(13)

Add 61-9.122.21(j)(1)(ix) in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(j)(4)(i) in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(j)(5)(i) in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(j)(6)(i) in accordance with NPDES Applications and Program Updates.

Amend 61-9.122.21(k)(5)(vi) in accordance with NPDES Applications and Program Updates.

Add 61-9.122.22(e) in accordance with NPDES Electronic Reporting Rule.

Add 61-9.122.26(b)(15)(i)(C) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.26(g)(1)(iii) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.28(b)(2)(i) and (ii) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.34(g)(3) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.41(l)(4)(i) in accordance with NPDES Electronic Reporting Rule.



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Amend 61-9.122.41(1)(6)(i) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.41(1)(7) in accordance with NPDES Electronic Reporting Rule.

Add 61-9.122.41(1)(9) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.41(m)(3)(i) and (ii) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.42(c) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.42(e)(4) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.42(e)(4)(vi) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.43(a) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.44(i)(1) to correct a typographical error.

Amend 61-9.122.44(i)(1)(iv) in accordance with NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting.

Amend 61-9.122.44(i)(2) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.44(k)(4) in accordance with NPDES Applications and Program Updates.

Add 61-9.122.48(c) in accordance with NPDES Electronic Reporting Rule.

Add 61-9.122.63(i) in accordance with NPDES Electronic Reporting Rule.

Add 61-9.122.64(c) in accordance with NPDES Electronic Reporting Rule.

Add and reserve 61-9.124.10(c)(2)(iii) in accordance with NPDES Applications and Program Updates.

Add 61-9.124.10(c)(2)(iv) in accordance with NPDES Applications and Program Updates.

Amend 61-9.125.3(a)(1)(ii) in accordance with NPDES Applications and Program Updates.

Add 61-9.127 in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.403.12(e)(1) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.403.12(h) and (i) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.503.18(a) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.503.28(a) in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.503.48(a) in accordance with NPDES Electronic Reporting Rule.

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

Interested persons may submit comment(s) on the proposed amendments to Andrew Edwards of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 23, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendments during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

**Preliminary Fiscal Impact Statement:**

The Department expects a significant reduction in cost to the State or its political subdivisions as a result of these amendments.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-9, Water Pollution Control Permits.

Purpose: Proposed amendments of R.61-9 to adopt portions of three federal Clean Water Act rules issued by the United States Environmental Protection Agency (“EPA”) required for State program implementation.

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

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

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

The Department proposes amending R.61-9 to adopt portions of three federal Clean Water Act rules issued by the EPA. Adoption of these federal regulations is necessary for State program implementation. The regulations include NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting (79 FR 49001, August 19, 2014), NPDES Electronic Reporting Rule (80 FR 64063, October 22, 2015), and NPDES Applications and Program Updates (84 FR 3324, February 12, 2019). Incorporating these rules into R.61-9 modifies existing NPDES regulations, which clarifies that permit applicants must use “sufficiently sensitive” analytical test methods, requires the electronic reporting and sharing of NPDES program information, and revises NPDES application and public notice requirements consistent with electronic reporting.

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### DETERMINATION OF COSTS AND BENEFITS:

The proposed amendments will save time and resources for the State and regulated permittees by transitioning from paper to electronic reporting. The amendments will also increase data accuracy, which will result in improved compliance to provide better protection of the waters of the State.

### UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal.

### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The proposed amendments to R.61-9 seek to maintain compliance with federal law, which promotes the protection of water quality and public health.

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

Failure by the Department to incorporate the required revisions in R.61-9 would result in the established NPDES Program to maintain inaccurate representations of the water quality of the State's waters.

### Text:

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

Document No. 4884

### COMMISSION ON INDIGENT DEFENSE

#### CHAPTER 70

Statutory Authority: 1976 Code Sections 17-3-10, 17-3-20, 17-3-45, and 17-3-310

70-10. Indigent Screening Process. (New)

### Preamble:

The Commission on Indigent Defense proposes to promulgate R.70-10 addressing a uniform process to be followed by the current (as of July 1, 2019) screening entities in Aiken, Allendale, Chester, Clarendon, Florence, Horry, Laurens, Marlboro, Richland and Spartanburg Counties to conduct a financial review of an applicant's resources to determine if he/she is indigent and financially unable to employ counsel.

Section 17-3-310 requires the Commission to develop rules, policies, procedures, regulations, and standards regarding the criteria and process to be used in the determination of indigency and the qualifications for services for indigent legal representation.

Notice of Drafting for the proposed regulation was published in the *State Register* on June 28, 2019.

### Section-by-Section Discussion

70-10. Added to provide a uniform process for screening for indigent defense services.

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

Interested persons are invited to submit their views in writing to Hervery B. O. Young, Deputy Director and General Counsel, SC Commission on Indigent Defense, Post Office Box 11433, Columbia, SC 29211. To be considered, comments must be received no later than September 23, 2019, close of the comment period. Should a public hearing be requested, the hearing will be held at the Commission on Indigent Defense office on November 15, 2019 at 10:00 am in the Conference Room, 1330 Lady Street, Suite 401, Columbia, SC 29201.

**Preliminary Fiscal Impact Statement:**

The Commission on Indigent Defense estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: Screening Process to Determine Indigency for Court Appointed Legal Representation.

Purpose: The purpose of the regulation is to provide a uniform process to conduct indigency screening for court appointed legal representation to be followed by the current screening entities in the above 10 counties. This process will provide data so the agency can track and analyze time, costs and other issues relating to the screening process in determining the best process for conducting indigent screening.

Legal Authority: 1976 Code Sections 17-3-10, 17-3-20, 17-3-45, and 17-3-310.

Plan for Implementation: The regulation will take effect upon approval by the General Assembly and upon publication in the State Register. The Commission on Indigent Defense will notify the screening entities for the applicable counties of the regulation and post the regulation on the agency’s website.

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

The proposed regulation is necessary to provide uniformity for applicants for indigent legal representation and for the determination of indigency to qualify for appointed legal representation. The regulation will ensure that services are provided to those that are indigent.

**DETERMINATION OF COSTS AND BENEFITS:**

Implementation of this regulation will not require additional resources. However, regular monitoring of the process will allow the State and/or County to determine if additional resources are necessary to conduct proper screening.

**UNCERTAINTIES OF ESTIMATES:**

None.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

This regulation will have no effect on the environment and public health of this State.

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

There will be no detrimental effects on the environment and public health if the regulation is not implemented in this State.

### Statement of Rationale:

The SC Code of Laws provides that the Commission on Indigent Defense is responsible for establishing criteria for determining indigency. It does not explicitly state which entity is responsible for conducting the screening, only making reference is to the “clerk of court or other appropriate official”. The benefit of the lack of specificity is the flexibility it allows each county to implement a solution that works best for it. However, the lack of specificity does not provide for a uniform and clear process for applicants and screening entities. This regulation is promulgated to provide a uniform screening process which can be followed by all entities conducting screening and determining the indigency status of applicants for indigent defense representation.

### Text:

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

Document No. 4889  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF CHIROPRACTIC EXAMINERS**  
CHAPTER 25  
Statutory Authority: 1976 Code Section 40-9-30(D)(3)

- 25-1. Organization, Administration and Procedure.
- 25-2. Application for Licensure.
- 25-3. Licensure by Endorsement.
- 25-4. Volunteer Licensure under Special Circumstances.
- 25-5. Professional Practices.
- 25-6. Professional Conduct.
- 25-7. Code of Ethics.
- 25-8. Advertising and Solicitation.
- 25-9. Disciplinary Actions and Procedures.
- 25-10. Inactive Status. (New Section)

### Preamble:

The South Carolina Board of Chiropractic Examiners proposes to add regulations: clarifying licensure requirements for applicants with lapsed out-of-state licenses; allowing CE credits for teaching assistants; exempting new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; requiring licensees to report CE hours to the electronic tracking system; and establishing procedures governing inactive license status.

Additionally, the Board proposes to amend: R.25(A)(1) and (2) to change the lapsed license cutoff from three to four years to make renewal easier for licensees; and R.25-5(B) to define one hour of CE credit and to correspondingly delete the sixty-minute descriptor from R.25-5(B)(4)(d) and renumber accordingly.

The Board further proposes to amend the following regulations for purposes of correcting scribes' errors and clarifying existing language: R. 25-1, R.25-2, R.25-3, R.25-4, R.25-5, 25-6 and 25-8.

Section-by-Section Discussion

25-1. Add Examiners to the name of the Board.

25-2(A)(1). No change.

25-2(A)(2). Replace has with having and replace meets with meeting.

25-2(A)(3). Replace examination with license.

25-2(A)(3)(a). Add "a" and replace capital letters with lowercase letters in chiropractic college.

25-2(A)(3)(b). Add "a" and replace capital letters with lowercase letters in chiropractic college.

25-2(A)(3)(c). Add "a" and replace capital letters with lowercase letters in chiropractic college.

25-2(A)(4)-(6). No change.

25-2(A)(7). Make the word "Fee" plural and remove schedule.

25-2(B). No change.

25-3(A). Replace practiced with been licensed.

25-3(B)-(F). No change.

25-3(G). Add section stating out-of-state applicant whose license has been expired for four years or less must apply and provide proof of CE hours completed when license was expired.

25-3(H). Add section stating out-of-state applicant whose license has been expired for more than four years must apply and take and pass the SPEC exam, or meet requirements in effect at the time of the application.

25-4(A). Replace lowercase B with uppercase B in Board.

25-4(A)(1). Replace chiropractic school with chiropractic college.

25-4(A)(2)-(5). No change.

25-4(B). No change.

25-4(C)(1). Replace chiropractic school with chiropractic college.

25-4(C)(2)-(3). No change.

25-4(D). No change.

25-5(A). Add South Carolina before Licenses.

25-5(A)(1). Replace fewer than three (3) with four (4) or less. Add for each lapsed or expired renewal cycle to modify satisfactory evidence of CE. Replace "continuing education" with abbreviation, CE. Replace year's license fee with renewal cycle's license fee.

25-5(A)(2). Replace three (3) with more than four (4) years. Strike or longer.

25-5(B). Include reference to abbreviation for continuing education, CE. Add definition of one continuing education hour. Replace "continuing education" with CE.

25-5(B)(1). No change.

25-5(B)(2). Replace "continuing education" with CE.

25-5(B)(2)(a). Add a comma after Examination, and add the word "which" after the word Examination following the comma. Replace "continuing education" with CE. Change twelve hours of CE to 15 hours of CE per administration, including risk management and boundary issues credit.

25-5(B)(2)(b). Strike the word further, and add the word which after the word meetings following comma. Replace "continuing education" with CE.

25-5(B)(2)(c). Add the word chiropractic before college. Add a comma after the word college and add the word which after the comma. Replace "continuing education" with CE.

25-5(B)(2)(d). Add that serving as a teaching assistant for a course at an accredited chiropractic college which can earn one-half of the hours earned by students taking the course counts toward continuing education.

25-5(B)(2)(e). Renumber prior section (d). Replace "continuing education" with CE.

25-5(B)(2)(f). Renumber prior section (e). Replace "continuing education" with CE. Add "and" at the end of the sentence.

25-5(B)(2)(g). Add that CE may be granted for attending a test committee of NBCE, which may be accepted as twelve (12) hours of CE per meeting.

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- 25-5(B)(3). Add section granting a continuing education exemption for chiropractors who graduate from an accredited chiropractic college and become licensed to practice within the same biennial license renewal period.
- 25-5(B)(4). Renumber prior section (3).
- 25-5(B)(4)(a)-(c). No change.
- 25-5(B)(4)(d). Replace “continuing education” with CE.
- 25-5(B)(5). Renumber prior section (4).
- 25-5(B)(5)(a)-(c). No change
- 25-5(B)(5)(d). Strike 60 minute.
- 25-5(B)(5)(e)-(h). No change.
- 25-5(B)(6). Renumber prior section (5).
- 25-5(B)(7). Renumber prior section (6).
- 25-5(B)(8). Renumber prior section (7).
- 25-5(C). Replace “continuing education” with CE.
- 25-5(D). Replace “continuing education” with CE.
- 25-5(E). Add physiotherapy exam following National Board of Chiropractic Examiners.
- 25-5(F). No change.
- 25-5(G). Add that licensees must report continuing education hours through the agency’s tracking system for monitoring and compliance. Replace “continuing education” with CE.
- 25-5(G)(1). Strike and automatic audit for the next two (2) audit periods, or.
- 25-5(G)(2). No change.
- 25-5(H)(1). No change.
- 25-5(H)(2). Add “a” before doctor of chiropractic.
- 25-5(H)(3)-(9). No change.
- 25-6(A)(1)-(15). No change.
- 25-6(A)(16). Strike advertising x-ray services without explanation of need or otherwise implying indiscriminate use of x radiation is prohibited. Replace with a chiropractor shall not receive payment, commission, or any type of gratuity for referral of patients.
- 25-6(B). No change.
- 25-6(C)(1). Capitalize b in Board.
- 25-6(C)(2). No change.
- 25-6(D). Strike requirement that a chiropractor notify the board administrator that he chooses to terminate a relationship with a patient.
- 25-6(E)(1). No change.
- 25-6(E)(2). Replace chiropractic school with chiropractic college.
- 25-6(E)(3). No change.
- 25-6(F)-(G). No change.
- 25-7. No change.
- 25-8(A). Add that an individual chiropractor is responsible for ensuring that communications, solicitations, or advertisements connected to his or her practice comply with the regulations.
- 25-8(B). Add or digital before broadcast.
- 25-8(C). No change.
- 25-8(D)(1)-(6). No change.
- 25-8(D)(7). Strike section stating an advertisement shall not involve the payment, receipt of a commission or other gratuity for referral of patients. Strike section stating chiropractors must limit their source of professional income to service actually rendered or rendered under their supervision. Replace with section stating chiropractors may not advertise free x-ray services without explanation of need or otherwise implying indiscriminate use of x-radiation.
- 25-9. No change.
- 25-10. New section entitled Inactive Status.
- 25-10(A). Section providing mechanism and time limitations for inactive status.
- 25-10(B). Section listing what chiropractors may not do while a license is on inactive status.
- 25-10(C). Section regarding continuing education during inactive status.

25-10(D). Section regarding reactivation of inactive license.

25-10(E). Section explaining when an inactive license expires.

25-10(F). Section providing a lapsed or expired license may not be placed on inactive status and may only be reinstated as required in regulation.

A Notice of Drafting was published in the *State Register* on April 26, 2019.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court on October 22, 2019, at 10:00 A.M. Written comments may be directed to Mack Williams, Administrator, Board of Chiropractic Examiners, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1289, no later than 5:00 P.M., on September 23, 2019. If qualifying requests pursuant to Section 1-23-110(A)(3) are not timely received, the hearing will be canceled.

**Preliminary Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Need and Reasonableness:**

These regulations are amended to clarify licensure requirements for applicants with lapsed out-of-state licenses; to allow CE credits for teaching assistants; to exempt new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; to require licensees to report CE hours to the electronic tracking system; and to establish procedures governing inactive license status. They are further amended to change the lapsed license cutoff from three to four years and to define one hour of CE credit and to correspondingly delete the sixty-minute descriptor. Scrivener’s errors are also corrected in this proposed regulation.

**DESCRIPTION OF REGULATION:**

Purpose: The board is amending its regulations to clarify licensure requirements for applicants with lapsed out-of-state licenses; to allow CE credits for teaching assistants; to exempt new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; to require licensees to report CE hours to the electronic tracking system; and to establish procedures governing inactive license status. They are further amended to change the lapsed license cutoff from three to four years and to define one hour of CE credit and to correspondingly delete the sixty-minute descriptor. Scrivener’s errors are also corrected in this proposed regulation.

Legal Authority: 1976 Code Section 40-9-30(D)(3).

Plan for Implementation: The revised regulations will take effect upon approval by the General Assembly and upon publication in the *State Register*. LLR will notify licensees of the revised regulation and post the revised regulations on the agency’s website.

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

The proposed regulations will provide beneficial guidance to those applying for licensure and for those wishing to place their license in an inactive status for a defined period of time. They will offer CE credit for teaching assistants and will exempt new graduates from CE requirements if they have completed chiropractic



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college and have been licensed during the same license renewal period. The proposed regulations make tracking CE simpler using the agency's tracking service and also extend the lapsed license cutoff period from three to four years, among other things.

### **DETERMINATION OF COSTS AND BENEFITS:**

There is no cost incurred by the state for the promulgation of these regulations.

### **UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates concerning the regulations.

### **EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

These regulations will have no effect on the environment.

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

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

### **Statement of Rationale:**

The updated regulations will: clarify licensure requirements for applicants with lapsed out-of-state licenses; allow CE credits for teaching assistants; exempt new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; require licensees to report CE hours to the electronic tracking system; and establish procedures governing inactive license status. They will also change the lapsed license cutoff from three to four years and will define one hour of CE credit and correspondingly delete the sixty-minute descriptor. Scrivener's errors will also be corrected in this proposed regulation.

### **Text:**

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

Document No. 4890  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF DENTISTRY**  
CHAPTER 39

Statutory Authority: 1976 Code Sections 40-1-50(D), 40-1-70, and 40-15-40(G)

- 39-8. Laboratory Work Authorization Form.
- 39-10. Sanitary Standards
- 39-11. Ethics

### **Preamble:**

The South Carolina Board of Dentistry proposes to amend regulations regarding laboratory work authorization forms, sanitary standards and ethics.

Section-by-Section Discussion

- 39-8 Strike title and all language. Rename “Laboratory Interactions”.
- 39-8(A) Add new language describing requirements for work authorization form.
- 39-8(B) Add new language establishing protocol for materials having had contact with patients.
- 39-8(C) Add new language establishing protocol for materials that will have contact with patients.
- 39-10 (A) No change.
- 39-10(A)(1) Modify CDC abbreviation.
- 39-10(A)(2)-(5) No change.
- 39-10(A)(6)(a) Replace “according to usage, i.e., autoclave, boiling water sterilization, or cold sterilizer solutions as indicated” with “in compliance with the current recommendations of the CDC”.
- 39-10(A)(6)(b) No change.
- 39-11 (1A – 4D) Strike all and replace with updated version of the Code of Ethics.

A Notice of Drafting was published in the *State Register* on March 22, 2019.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court at 10:00 A.M., on October 15, 2019. Written comments may be directed to Holly Beeson, Counsel to the Office of Communications and Governmental Affairs, South Carolina Department of Labor, Licensing, and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 P.M., on September 23, 2019. If a qualifying request pursuant to Section 1-23-110(A)(3) is not timely received, the hearing will be canceled.

**Preliminary Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Need and Reasonableness:**

The Board seeks to update its code of ethics, as the American Dental Association has issued its ethics code with official advisory opinions revised in February 2018. Additionally, the Board intends to update its regulation regarding sanitary standards to be consistent with the CDC. Finally, the Board seeks to update its regulation regarding the laboratory work authorization form to provide more guidance to the licensee on the requirements.

**DESCRIPTION OF REGULATION:**

The South Carolina Board of Dentistry proposes to update its regulations pertaining to laboratory work authorization forms to provide more guidance to the public. The Board further seeks to update its regulations related to be sanitary standards to be consistent with CDC standards. Finally, the Board is striking its ethics code and reissuing the same, following consideration of the ADA Code of Ethics and updated advisory opinions.

Legal Authority: 1976 Code Sections 40-1-50(D), 40-1-70 and 40-15-40(G).

Plan for Implementation: The revised regulations will take effect upon approval by the General Assembly and upon publication in the *State Register*. LLR will notify licensees of the revised regulations and post the revised regulations on the agency’s website.

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

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The Board seeks to update its code of ethics, as the American Dental Association has issued its ethics code with official advisory opinions revised in February 2018. Additionally, the Board intends to update its regulation regarding sanitary standards to be consistent with the CDC. Finally, the Board seeks to update its regulation regarding the laboratory work authorization form to provide more guidance to the licensee on the requirements.

### DETERMINATION OF COSTS AND BENEFITS:

There is no cost incurred by the state for the promulgation of these regulations.

### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning the regulations.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment.

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

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

### Statement of Rationale:

The South Carolina Board of Dentistry proposes to update its regulations pertaining to laboratory work authorization forms to provide more guidance to the public. The Board further seeks to update its regulations related to be sanitary standards to be consistent with CDC standards. Finally, the Board is striking its ethics code and reissuing the same, following consideration of the ADA Code of Ethics and updated advisory opinions.

### Text:

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

Document No. 4891  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF LANDSCAPE ARCHITECTURAL EXAMINERS**  
CHAPTER 76  
Statutory Authority: 1976 Code Sections 40-1-70 and 40-28-90

76-6. Continuing Education.

### Preamble:

The South Carolina Board of Landscape Architectural Examiners proposes to amend R.76-6 to clarify continuing education requirements.

### Section-by-Section Discussion

76-6(A). No change.

- 76-6(A)(1). Strike all and replace with “Continuing Education Hours”.
- 76-6(A)(1)(a). Add definition of CE hour. Content of existing section is moved to (A)(2)(a).
- 76-6(A)(1)(b). Insert and modify language from existing version of (A)(1) requiring 20 hours of CE.
- 76-6(A)(2). Add “Continuing Education Topic Categories.”
- 76-6(A)(2)(a). Add “Category 1”. Clarify that 15 hours is of the required 20 hours. Strike examples and add explanation for what Health/Safety/Welfare educational topics are.
- 76-6(A)(2)(b). Add “Category 2”.
- 76-6(A)(2)(a) and (b). Prior section stricken.
- 76-6(A)(3). Strike.
- 76-6(B). No change.
- 76-6(B)(1). Add “Category 1”. Add “educational” between structured and activities. Add section providing information regarding structured activities.
- 76-6(B)(2). Add “Category 2”. Replace “may include” with “is defined as activities that include”.
- 76-6(B)(2)(a). No change.
- 76-6(B)(2)(b). No change.
- 76-6(B)(2)(c). No change.
- 76-6(B)(2)(d). Existing language of section (B)(3). Sentence stating licensees may not claim credit for teaching the same course more than once per reporting period added.
- 76-6(B)(2)(e). Existing language of section (B)(3)(a). Replace “continuing education” with “of the twenty (20) hours” and replace “claimed per course” with “earned in self-directed activities.”
- 76-6(B)(3)(b). Strike.
- 76-6(B)(4). Move existing language to (C)(4).
- 76-6(C). No change.
- 76-6(C)(1)-(3). No change.
- 76-6(C)(4). Insert language from prior section (B)(4).
- 76-6(C)(5). Renumber and change 180 to 45.
- 76-6(C)(6). Renumber. Otherwise no change.
- 76-6(C)(7). Add allowance for maximum carryover of ten hours of Category 1 structured educational activities CE to the next renewal period.
- 76-6(D). No change.
- 76-6(D)(1). Remove numbering.
- 76-6(D)(1)(A). Renumber as 1. Change first renewal to initial licensure period. Strike not to exceed two years.
- 76-6(D)(1)(B). Renumber as 2.
- 76-6(D)(1)(C). Renumber as 3. Add thirty days in advance of the renewal period.
- 76-6(D)(1)(D). Renumber as 4. Clarify that the Board approves for emeritus status.

A Notice of Drafting was published in the *State Register* on April 26, 2019.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court at 10:00 a.m. on October 16, 2019. Written comments may be directed to Molly Price, Administrator, Board of Landscape Architectural Examiners, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1289, no later than 5:00 p.m., September 23, 2019. If qualifying requests pursuant to Section 1-23-110(A)(3) are not timely received, the hearing will be canceled.

**Preliminary Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

## **46 PROPOSED REGULATIONS**

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

These regulations are amended to clarify continuing education requirements.

### **DESCRIPTION OF REGULATION:**

Purpose: The board is amending its regulations to clarify continuing education requirements.

Legal Authority: 1976 Code Sections 40-1-70 and 40-28-90.

Plan for Implementation: The revised regulations will take effect upon approval by the General Assembly and upon publication in the State Register. LLR will notify licensees of the revised regulation and post the revised regulations on the agency's website.

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

The proposed regulations will clarify continuing education requirements.

### **DETERMINATION OF COSTS AND BENEFITS:**

There is no cost incurred by the state for the promulgation of these regulations.

### **UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates concerning the regulations.

### **EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

These regulations will have no effect on the environment.

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

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

### **Statement of Rationale:**

The updated regulations will clarify continuing education requirements.

### **Text:**

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

Document No. 4892

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BOARD OF LONG TERM HEALTH CARE ADMINISTRATORS  
CHAPTER 93**

Statutory Authority: 1976 Code Sections 40-1-70 and 40-35-60

93-50. General Definitions.

93-70. Additional combination of education and experience acceptable by the Board; Criminal Background Check; Completion of probation or parole.

**Preamble:**

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-50 to add a definition for Health Services Executive and R.93-70 to include Health Services Executive certificates as satisfying the education and experience requirements for nursing home administrators and community residential care facility administrators.

Section-by-Section Discussion

93-50(A) – (K) No change.

93-50(L). Add definition of Health Services Executive (HSE).

93-60. No change.

93-65. No change.

93-70(A). Remove section “B” from reference to S.C. Code Section 40-35-40 and remove “of a community residential care facility administrator.”

93-70(A)(1). Delete from this section and move to the newly-created 70(A)(2)(a). Add language stating a nursing home administrator validated by NAB as meeting requirements for HSE is deemed acceptable by the Board for purposes of licensure.

93-70(A)(2). Add section for community residential care facility administrator.

93-70(A)(2)(a). Add language from prior section 93-70(A)(1) providing nursing home administrators do not have to perform two years of on-site work experience at CRCFs under licensed CRCF administrators.

93-70(A)(2)(b). Add new section stating validation by NAB as meeting requirements for HSE is deemed acceptable by the Board for purposes of licensure.

A Notice of Drafting was published in the *State Register* on June 28, 2019.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court at 10:00 a.m. on October 18, 2019. Written comments may be directed to Meredith Buttler, Administrator, Board of Long Term Health Care Administrators, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1289, no later than 5:00 p.m., on September 23, 2019. If qualifying requests pursuant to Section 1-23-110(A)(3) are not timely received, the hearing will be canceled.

**Preliminary Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

## **48 PROPOSED REGULATIONS**

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

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-50 to add a definition for Health Services Executive and R.93-70 to include Health Services Executive certificates as satisfying the education and experience requirements for nursing home administrators and community residential care facility administrators.

### **DESCRIPTION OF REGULATION:**

**Purpose:** The proposed regulation would simplify and expedite licensure for individuals who have obtained the Health Services Executive Certificate because the requirements for said certificate satisfy state law requirements for nursing home administrators and community residential care facility administrators.

**Legal Authority:** 1976 Code Sections 40-1-70 and 40-35-60.

**Plan for Implementation:** The revised regulations will take effect upon approval by the General Assembly and upon publication in the State Register. LLR will notify licensees of the revised regulation and post the revised regulations on the agency's website.

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

The proposed regulation is both reasonable and necessary in that it ensures licensure requirements are met by applicants already possessing the Health Services Executive certificate and expedites their licensure in our state.

### **DETERMINATION OF COSTS AND BENEFITS:**

There is no cost incurred by the state for the promulgation of these regulations.

### **UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates concerning the regulations.

### **EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

These regulations will have no effect on the environment.

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

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

### **Statement of Rationale:**

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-50 to add a definition for Health Services Executive and R.93-70 to include Health Services Executive certificates as satisfying the education and experience requirements for nursing home administrators and community residential care facility administrators.

**Text:**

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

Document No. 4893  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**  
 CHAPTER 71  
 Statutory Authority: 1976 Code Section 41-15-220

Chapter 71, Article 1, Subarticle 3. Recording and Reporting Occupational Injuries and Illnesses.

**Preamble:**

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, proposes to amend Chapter 71, Article 1, Subarticle 3, the Occupational Injury and Illness Recording and Reporting regulation, by rescinding the requirement for establishments with 250 or more employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report) to OSHA on an annual basis. South Carolina OSHA is also amending Chapter 71, Article 1, Subarticle 3, to require covered employers to electronically submit their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future.

Section-by-Section Discussion

- 71-300. Add comma after injuries.
- Note to 71-300. Add apostrophe after “s” in workers compensation.
- Note. No change.
- 71-301(a)(1). Add 71-341 or.
- 71-301(a)(2). No change.
- 71-301(b)(1). No change.
- 71-301(b)(2). No change.
- 71-301(b)(3). Add employers.
- 71-302(a)(1). Delete abbreviation and spell out Section.
- 71-302(a)(2). No change.
- 71-302(b)(1). Add partially.
- 71-302(b)(2). No change.
- 71-302(b)(2)(i). No change.
- 71-302(b)(2)(ii). No change.
- 71-302(b)(2)(iii). No change.
- 71-302(b)(3). Add employers.
- 71-303. Add Cross-reference: 1904.3.
- Non-Mandatory Appendix A to Subpart – B. Delete abbreviation and spell out Section. Delete Cross-reference: 1904.3.
- NAICS Code Chart. Strike-through Cross-Reference: 1904.2 and Add Cross-Reference: Appendix A to Subpart B of Part 1904.
- Note. No change.
- 71-304(a)(1)-(3). No change.
- 71-304(b)(1)(i)-(iv). No change.
- 71-304(b)(2). Move Cross-Reference: 1904.4 to appear following chart.



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- 71-305(a). No change.
- 71-305(b)(1). No change.
- 71-305(b)(2)(i)-(ii). No change.
- 71-305(b)(2)(iii). Add comma after fitness.
- 71-305(b)(2)(iv)-(ix). No change.
- 71-305(b)(3). No change.
- 71-305(b)(4)-(5). No change.
- 71-305(b)(6). Correct a other to another and strike-through or. Capitalize c in Checked.
- 71-305(b)(7). Add colon to Cross-Reference.
- 71-306(a)(1)-(2). No change.
- 71-306(b)(1)-(2). No change.
- 71-306(b)(3). Add colon to Cross-Reference.
- 71-307(a). No change.
- 71-307(b)(1)-(2). No change.
- 71-307(b)(3)(i)-(iii). No change.
- 71-307(b)(3)(iv). Add a before work-related injury or illness.
- 71-307(b)(3)(v)-(ix). No change.
- 71-307(b)(4)(i)-(iv). No change.
- 71-307(b)(4)(v). Delete comma after job transfer.
- 71-307(b)(4)(vi). No change.
- 71-307(b)(4)(vii). Add who before recommended the restriction.
- 71-307(b)(4)(viii)-(xi). No change.
- 71-307(b)(5)(i)(A)-(C). No change.
- 71-307(b)(5)(ii)(A)-(C). No change.
- 71-307(b)(5)(ii)(D) and (E). Correct trademark symbol to appear as superscript.
- 71-307(b)(5)(ii)(F)-(N). No change
- 71-307(b)(5)(iii)-(v). No change.
- 71-307(b)(6)-(7). No change.
- Note to 71-307. Add colon to Cross Reference.
- 71-308. No change.
- 71-309. Add colon to Cross Reference.
- 71-310(a). No change.
- 71-310(b)(1)-(3). No change.
- 71-310(b)(4). Add s to indicate.
- 71-310(b)(5). No change.
- 71-310(b)(6). Add following the rules set out in Section 71-305. Add following the rules set out in Section 71-305. Change the sentence to read that occupational noise exposure did not significantly aggravate the hearing loss as opposed to that the hearing loss has not been significantly aggravated by occupational noise exposure. Change you are not required to consider to you do not have to consider. Strike-through to before record the case on the OSHA Log.
- 71-310(b)(7). No change.
- 71-311. No change.
- 71-329(a). No change.
- 71-329(b)(1)-(6). No change.
- 71-329(b)(7)(i)-(ii). No change.
- 71-329(b)(7)(iii). Add es to illnesses.
- 71-329(b)(7)(iv)-(vi). No change.
- 71-329(b)(8)-(9). No change.
- 71-329(b)(10)(i)-(ii). No change.
- 71-329(b)(10)(iii). Remove “d” from “and” so that it reads, “an authorization”.
- 71-330(a). No change.
- 71-330(b)(1). Add apostrophe to s in short-term establishments’ recordable injuries.

- 71-330(b)(2)-(3). No change.
- 71-330(b)(4). Add colon to Cross Reference.
- 71-331(a). Add comma after seasonal.
- 71-331(b)(1)-(3). No change.
- 71-331(b)(4). Replace “employ Section 1926.20 (a) Contractor Requirements. l) No contractor or subcontractor for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety” with “employer’s OSHA 300 Log (if that company provides day-to-day supervision). Add colon to Cross Reference.
- 71-332(a). No change.
- 71-332(b)(1)-(2). No change.
- 71-332(b)(3). Add comma after information was recorded.
- 71-332(b)(4)-(5). No change.
- 71-332(b)(6). Add colon after Cross Reference.
- 71-333(a). No change.
- 71-333(b)(1)-(2). No change.
- 71-333(b)(3). Add colon after Cross Reference.
- 71-334. Add you before owned the establishment. Add colon to Cross Reference.
- 71-335(a). No change.
- 71-335(b)(1). No change.
- 71-335(b)(2)(i)-(iii). No change.
- 71-335(b)(2)(iv). Strike the words paragraphs.
- 71-335(b)(2)(v). No change.
- 71-335(b)(2)(vi). Add colon.
- 71-336. Add colon.
- 71-337(a). No change.
- 71-337(b)(1)-(4). No change.
- 71-337(b)(5). Add Cross Reference 1904.37.
- 71-339(a)(1). No change.
- 71-339(a)(2). Add SC before OSHA.
- 71-339(a)(3). No change.
- 71-339(b)(1). Remove existing response and replace with No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either 1-803-896-7672 or 1-800-321-OSHA (1-800-321-6742).
- 71-339(b)(2). No change.
- 71-339(b)(3) and (4). Add hyphen to in-patient.
- 71-339(b)(5)-(7). No change
- 71-339(b)(8) - (10). Add hyphen to in-patient.
- 71-339(b)(11). No change.
- 71-340(a)-(b)(1). No change.
- 71-340(b)(2). Add colon to Cross Reference.
- 71-341(a)(1). Strike Subarticle 3 records. Strike the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) and replace with OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA’s designee. Add for example, 2019 for the 2018 form.
- 71-341(a)(2)-(4). No change.
- 71-341(b)(1). Replace “from the injury and illness records” with “this” or “the”. Strike Form 300A, 300 and 301. Replace E of this part with this. Strike Form 300A. Strike or forms. Replace 2017 with 2019. And 2016 with 2018.
- 71-341(b)(2). Strike.
- 71-341(b)(3). Renumber as 2.

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- 71-341(b)(4). Renumber as 3 and strike “from the injury and illness records.” Correct the spelling of website.
- 71-341(b)(5). Renumber. Strike the question and replace with, “When do I have to submit the information”. Strike or forms. Add for example, 2019 for the 2018 form. Strike as often.
- 71-341(b)(6). Renumber. Correct the spelling of website.
- 71-341(b)(7). Renumber. Strike Subarticle 3.
- 71-341(b)(8). Renumber.
- 71-341(b)(9). Strike part 1904 records and replace with information. Strike (1) or (2) regarding paragraph (a).
- 71-341(c)(1). Correct capital Y to lower case y in chart. Replace July 1 with December 15 deadline in chart. Correct 201 to read 301 in chart.
- 71-341(c)(2). Add colon to Cross Reference.
- Appendix A to Subpart E of Subarticle 3. Add parentheses around Cross Reference. Add colon to Cross Reference.
- 71-342(a). Replace semi-colon with comma.
- 71-342(b)(1)-(3). No change.
- 71-342(b)(4). Add colon to Cross Reference.
- 71-343(a). Replace 2001 with 2000.
- 71-343(b)(1)-(2). No change.
- 71-343(b)(3). Add colon to Cross Reference.
- 71-344. Add colon to Cross Reference.
- 71-346(1)-(2). No change.
- 71-346(3). Remove “d” from separate.
- 71-346(4). Add (Cross Reference: 1904.46).

A Notice of Drafting was published in the *State Register* on February 22, 2019.

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

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court at 10:00 A.M. on October 17, 2019. Written comments may be directed to Gwen Thomas, OSHA State Plan Manager, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1289, no later than 5:00 P.M., on September 23, 2019. If qualifying requests pursuant to Section 1-23-110(A)(3) are not timely received, the hearing will be canceled.

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

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

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

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, proposes to amend Chapter 71, Article 1, Subarticle 3, to rescind the requirement for establishments with 250 or more employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report) to OSHA on an annual basis to address concerns that the electronic submission would subject sensitive worker information to risk of public disclosure. South Carolina OSHA is also amending Chapter 71, Article 1, Subarticle 3, to require covered employers to electronically submit their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future. The first compliance deadline for the submission of EINs is March 2, 2020.

**DESCRIPTION OF REGULATION:**

**Purpose:** The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, proposes to amend Chapter 71, Article 1, Subarticle 3, the Occupational Injury and Illness Recording and Reporting regulation. The amendments will rescind the requirement for establishments with 250 or more employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report) to OSHA on an annual basis. This action eliminates a requirement that arose out of OSHA's 2016 electronic reporting rule and had an initial compliance deadline of July 1, 2018, but had not yet been enforced by OSHA. This requirement is being rescinded based on concerns that the electronic submission of Forms 300 and 301 would subject sensitive worker information to risk of public disclosure. South Carolina OSHA is also amending Chapter 71, Article 1, Subarticle 3, to require covered employers to electronically submit their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future. The first compliance deadline for the submission of EINs is March 2, 2020.

**Legal Authority:** 1976 Code Section 41-15-220.

**Plan for Implementation:** The revised regulations will take effect upon approval by the General Assembly and upon publication in the State Register. LLR will notify licensees of the revised regulation and post the revised regulations on the agency's website.

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

The proposed regulations will eliminate the electronic submission requirement for the log of work-related injuries and illnesses and the Injury and Illness Incident Report to ensure sensitive worker information is not disclosed publicly. The proposed regulation would also require employers to include their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future.

**DETERMINATION OF COSTS AND BENEFITS:**

There is no cost incurred by the state for the promulgation of these regulations.

**UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates concerning the regulations.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

These regulations will have no effect on the environment.

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

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

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### **Statement of Rationale:**

The proposed regulations will eliminate the electronic submission requirement for the log of work-related injuries and illnesses and the Injury and Illness Incident Report to ensure sensitive worker information is not disclosed publicly. The proposed regulation would also require employers to include their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future.

### **Text:**

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

Document No. 4895

**STATE FISCAL ACCOUNTABILITY AUTHORITY****CHAPTER 19**

Statutory Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76

19-445. Consolidated Procurement Code.

**Synopsis:**

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). In addition, Section 76 of 2019 Act No. 41 provides:

No later than the first Monday in September after this act takes effect, the State Fiscal Accountability Authority shall publish interim regulations it will follow to implement changes to Chapter 35, Title 11 of the 1976 Code, as contained in this act. These interim regulations must be used in implementing this act until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23, Title 1. No later than the first Monday in November after this act takes effect, the State Fiscal Accountability Authority shall publish a draft of the proposed final regulations it will follow to implement changes; provided, however, the interim regulations are not subject to the provisions of Chapter 23, Title 1.

In accordance with this provision, the agency prepared two documents for publication in the State Register, one for the interim regulations and one for the proposed final regulations. This document publishes only those regulations issued on an interim basis, which includes all and only those regulations that implement changes made to the Consolidated Procurement Code by 2019 Act No. 41. The proposed final regulations are being published simultaneously. They include, but are not limited to, the interim regulations.

For a section-by-section discussion of the interim regulations, please see the section-by-section discussion published with the proposed final regulations.

**Instructions:**

Repeal and reserve R.19-445.2000E (Effective Date). Delete the second Editor's Note following R.19-445.2010. Delete the Editor's Note following R.19-445.2015 and replace with the following text: "This Regulation 19-445.2015 applies only to solicitations issued after the first Monday in September, 2007. Any subsequent changes to this Regulation 19-445.2015 shall apply only to contracts awarded after the first Monday in September following the legislative session during which they are approved." Delete the Editor's Note following R.19-445.2050. Delete the Editor's Note following R.19-445.2095. Delete the Editor's Note following R.19-445.2097. Delete the Editor's Note following R.19-445.2105. Delete the second Editor's Note following R.19-445.2120. In an Editor's Note to R.19-445.2127, include the following text: "Regulation 19-445.2127 applies only to solicitations issued after November 29, 2019." Delete the Editor's Note following R.19-445.2180.

\*\*\*\*

The following sections of Regulation 19-445 are modified as provided below. All other items and sections remain unchanged.

**Text:**

19-445. Consolidated Procurement Code.

## 56 FINAL REGULATIONS

(Statutory Authority: 1976 Code Section 11-35-10 et seq., and 2019 Act No. 41, Section 76)

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19-445.2000. State Procurement Regulations.

A. General.

These Regulations issued by the South Carolina Budget and Control Board, hereafter referred to as the Board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina.

B. Organizational Authority.

(1) The Chief Procurement Officers acting on behalf of the Board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the appropriate chief procurement officers. The chief procurement officers shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Materials Management Officer is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) recommending differential dollar limits for direct procurements on the basis of but not limited to the following:

- (1) procurement expertise,
- (2) commodity,
- (3) service,
- (4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing acquisitions for the State by the State Procurement Office.

(e) coordinating with the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830.

(3) Office of Information Technology Management: The Office of Information Technology Management shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of State Engineer: The Office of State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement Code.

C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of



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the governmental body's authority under Section 11-35-1210, except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

(2) "Procuring Agency" means "purchasing agency" as defined in Section 11-35-310.

(3) "Certification" means the authority delegated by the board or the Director of Procurement Services to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19-445.2020.

### D. Duty to Report Violations

All governmental bodies shall comply in good faith with all applicable requirements of the consolidated procurement code and these procurement regulations. When any information or allegations concerning improper or illegal conduct regarding a procurement governed by the consolidated procurement code comes to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the appropriate chief procurement officer.

### E. [Reserved]

### F. Notice.

(1) When adequate public notice is required by Article 5, the notice must contain sufficient information to allow a prospective offeror to make an informed business judgment as to whether she should compete (or would have competed) for the contract. At minimum the notice must contain the following information, as applicable:

- (a) a description of the item(s) to be acquired;
- (b) how to obtain a copy of the solicitation document or the anticipated contract;
- (c) when and where responses are due; and
- (d) the place of performance or delivery.

(2) In addition to the information above, the notices required by Section 11-35-1560 and Section 11-35-1570 must include the contract dollar amount of the proposed contract.

### 19-445.2010. Disclosure of Procurement Information.

#### A. Reserved.

B. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

C. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (2) source selection plans, (3) technical evaluation plans, (4) technical evaluations of proposals, (5) cost or price evaluations of proposals, (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (7) rankings of responses, proposals, or competitors, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

D. In procurements conducted pursuant to Section 11-35-1530 or Section 11-35-1535, state personnel with access to proposal information shall not disclose either the number of offerors or their identity prior to the issuance of an award or notification of intent to award, whichever is earlier, except as otherwise required by law.

E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release to any individual information obtained in response to an RFP, without first obtaining from that individual a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of such information. Such agreements are binding and enforceable.

F. The release of a proposal to non-state personnel for evaluation does not constitute public disclosure or a release of information for purposes of the Freedom of Information Act.

G. Except as prohibited by law, and subject to section 2200, state contracts may include clauses restricting the state's release of documents and information received from a contractor if those documents are exempt from disclosure under applicable law.

H. Subject to item (E), any person may furnish source selection information to the Office of the State Engineer. The procurement officer shall provide to the Office of the State Engineer any information it requests regarding a procurement.

I. Non-Public Solicitations. In accordance with Section 11-35-410(E), information that forms a part of a specific solicitation need not be publicly available if (a) the information is otherwise exempt from disclosure by law (e.g., Chapter 4, Title 30 (The Freedom of Information Act)), (b) the information is available to any prospective offeror that has executed a nondisclosure agreement (NDA), and (c) the appropriate chief procurement officer has approved the use and terms of an NDA for the solicitation at issue. Prior to use in a specific solicitation, the terms of a proposed NDA must be published in the solicitation unless otherwise approved by the CPO. When requesting approval from the appropriate chief procurement officer, the governmental body must identify the information to be released pursuant to the NDA, explain the reason for the request, cite the legal basis for not making the information publicly available, and provide any other information requested by the CPO. If governmental body declines a person's request to enter an NDA and acquire the information thereto, it must immediately notify the CPO. Consistent with R.19-445.2030, the applicable solicitation should instruct bidders how to comply with the NDA when submitting their offer. Information to be released pursuant to the NDA may also be released in accordance with R.19-445.2200 (Administrative Review Protective Orders).

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of \$50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following four areas:

- (a) Supplies and services;
- (b) Consultant services;
- (c) Construction and related professional services;
- (d) Information technology.

(2) The Materials Management Officer shall review and report on the particular governmental body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidences of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selections;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;
- (l) Contract administration;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the Board.

B. Approval

(1)(a) Upon recommendation by the Materials Management Officer, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(a) and A(1)(d), not under term contracts, in an amount up to one hundred fifty

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thousand dollars, provided a report required by item A(2) has been prepared within two years preceding the request.

(b) Upon recommendation by the State Engineer based on her knowledge of and experience with the particular governmental body, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(c), not under term contracts, in an amount up to one hundred fifty thousand dollars.

(c) The director shall advise the board in writing of all authorizations granted pursuant to this section B.

(2) If a governmental body requests certification above one hundred fifty thousand dollars, the request, along with the recommendation of the Materials Management Officer and the report required by item A(2), shall be submitted to the board. Upon recommendation by the Materials Management Officer and approval by the board, the particular governmental body may be certified and assigned a dollar limit below which the certified governmental body may make direct agency procurements not under term contracts.

(3) Certification under item B(1) or B(2) shall be in writing and specify:

- (a) The name of the governmental body;
- (b) Any conditions, limits or restrictions on the exercise of the certification;
- (c) The duration of the certification; and
- (d) The procurement areas in which the governmental body is certified.

C. Using the criteria listed in item A(2) above, the office of each chief procurement officer shall be reviewed at least ever five years by the audit team of the Materials Management Office. The results of the audit shall be provided to the appropriate chief procurement officer and the designated board officer.

D. Limitations.

(1) Such certification as prescribed in section B shall be subject to any term contracts established by the chief procurement officers which requires mandatory procurement by all governmental bodies.

(2) Such certification as prescribed in section B may be subject to maintaining an adequate staff of qualified or certified procurement officers.

19-445.2045. Receipt, Safeguarding, and Disposition of Bids.

A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.

C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

19-445.2065. Rejection of Bids.

A. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the

items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

**B. Cancellation of Bids Prior to Award.**

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the invitation;
- (b) specifications have been revised;
- (c) the supplies, services, information technology, or construction being procured are no longer required;
- (d) the invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (f) all otherwise acceptable bids received are at unreasonable prices;
- (g) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel invitations for bids shall state the reasons therefor.

**C. Extension of Bid Acceptance Period.**

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

**19-445.2080. Bid Reductions.**

The responsible procurement officer may accept a voluntary reduction in price from a low bidder after bid opening but prior to award; provided that such reduction is not conditioned on, nor results in, the modification or deletion of any conditions contained in the invitation for bids.

**19-445.2090. Award.**

**A. Application.**

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

**B.** The procurement officer shall issue the notice of intent to award or award on the date specified in the solicitation, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of the revised posting date in accordance with Section 11-35-1520(10).

**19-445.2095. Competitive Sealed Proposals.**

**A. Request for Proposals.**

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Section 11-35-1530(2), Public Notice.

**B. Receipt and Safeguarding of Proposals.**

The provisions of Regulation 19-445.2045 shall apply for the receipt and safeguarding of proposals.

**C. Receipt of Proposals.**

The provisions of Regulation 19-445.2050(B) shall apply to the receipt and safeguarding of proposals. For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name

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of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

(2) As provided by the solicitation, offerors must visibly mark all information in their proposals that they consider to be exempt from public disclosure.

D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

The provisions of Section 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Construction.

Consistent with Section 48-52-670, which allows the use of competitive sealed proposals, it is generally not practicable or advantageous to the State to procure guaranteed energy, water, or wastewater savings contracts by competitive sealed bidding.

G. Procedures for Competitive Sealed Proposals.

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition. Unless excused by the State Engineer, the Office of State Engineer shall oversee (1) the evaluation process for any procurement of construction if factors other than price are considered in the evaluation of a proposal, and (2) any discussions with offerors conducted pursuant to Section 11-35-1530(6) or subsection I below.

H. Other Applicable Provisions.

The provisions of the following Regulations shall apply to competitive sealed proposals:

(1) Regulation 19-445.2042, Pre-Bid Conferences,

(2) Regulation 19-445.2060, Telegraphic and Electronic Bids,

(3) Regulation 19-445.2075, All or None Qualifications,

(4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.

(5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

(a) acceptable (i.e., reasonably susceptible of being selected for award);

(b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or

(c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

(a) Control all exchanges;

(b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

(c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

(d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

(e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions

may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

J. Rejection of Individual Proposals.

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;
- (b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
- (c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

K. [Reserved]

L. Delay in Posting Notice of Intent to Award or Award.

Regulation 19-445.2090B shall apply to competitive sealed proposals.

19-445.2097. Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the solicitation;
- (b) specifications have been revised;
- (c) the supplies, services, information technology, or construction being procured are no longer required;
- (d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;
- (f) all otherwise acceptable proposals received are at unreasonable prices;
- (g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

19-445.2099. Competitive Negotiations.

A. General

(1) Competitive negotiations are governed by R.19-445.2030(5), -2040, -2042, -2045, -2050B, -2085C, -2090B, -2095C, -2095J, and -2098. Regulation 19-445-2097 (Rejection of Proposals) applies to competitive negotiations except that R.19-445.2099(K)(1) is substituted for R.19-445.2097A.

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(2) Documentation required by this Regulation 19-445.2099 must be prepared at the time the process to be documented is conducted.

(3) For each competitive negotiation the head of the using agency or his designee must appoint in writing an individual to serve as the selection executive (SE). The SE must be an individual who has sufficient rank and professional experience to effectively carry out the functions of an SE. Subject to the authority and approval of the responsible procurement officer, the SE shall—

(a) Recommend an acquisition team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a well-developed solicitation, a comprehensive evaluation of offers, and effective negotiations;

(b) Approve the acquisition plan and the solicitation before solicitation release;

(c) Ensure consistency among and sufficiency of the solicitation requirements, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(d) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;

(e) Consider the recommendations of subject matter experts, advisory boards or panels (if any); and

(f) Select the source or sources whose proposal is the best value to the State, as provided in R.19-445.2099K.

(4) Consistent with Section 11-35-1535(A)(3), competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer; accordingly, a chief procurement officer may not delegate to a using agency the authority to conduct a competitive negotiation.

### B. Procedures for Competitive Negotiations.

The Division of Procurement Services may develop and issue procedures which shall be followed when using the competitive negotiations method of acquisition.

### C. Definitions

Clarification means any communication in which the responsible procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of an offer.

Competitive range means the offeror or group of offerors selected for negotiation.

Deficiency means any term of an offer that does not conform to a material requirement of a solicitation. A material requirement is one that affects the price, quantity, quality, delivery, or other performance obligations of the contract.

Negotiation means any communication, oral or written, that invites or permits an offeror to change any texts or graphics in the terms of its offer in any way. Negotiation does not include communications involving (i) information that is necessary to understand an offer, but that does not change any text or graphics in the offer, (ii) information about the offeror, or (iii) any other information that will not bind the parties upon acceptance of an offer.

Offer means those portions of a proposal that constitute a written promise or set of promises to act or refrain from acting in a specified way, so made as to manifest a commitment to be bound by those promises upon acceptance by the State. Offer does not include mere descriptions of approaches, plans, intentions, opinions, predictions, or estimates; statements that describe the offeror's organization or capability; or any other statements that do not make a definite and firm commitment to act or refrain from acting in a specified way.

Proposal means the information submitted to the State in response to a request for proposals. The information in a proposal includes (i) the offer, (ii) information explaining the offer, (iii) information about the offeror, and (iv) any other information that is relevant to source selection decision making.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

### D. Amending the solicitation

(1) When, either before or after receipt of proposals, the State changes its requirements or terms and conditions, the responsible procurement officer shall amend the solicitation.

(2) When, after the receipt of proposals, the State discovers that material inadequacies of the solicitation have contributed to technical or pricing deficiencies, the responsible procurement officer shall amend the solicitation to resolve the inadequacies, preferably prior to proceeding further with the procurement process.

(3) If a proposal of interest to the State involves a desirable departure from the stated requirements, the responsible procurement officer shall amend the solicitation, preferably prior to completion of proposal evaluation pursuant to F(1), provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see Regulation 19-445.2099I).

(4) Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(5) If, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the responsible procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

#### E. Evaluation Factors

(1) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(2) Evaluation factors and significant subfactors must—

(a) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(b) Support meaningful comparison and discrimination between and among competing proposals.

(3) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of the responsible procurement officer, subject to the following requirements:

(a) Price or cost to the State shall be evaluated unless the responsible procurement officer documents the reasons price or cost is not an appropriate evaluation factor for the acquisition and that decision is approved by the head of the using agency.

(b) The quality of the item to be acquired shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience.

(c) Past performance shall be evaluated unless the responsible procurement officer documents the reasons past performance is not an appropriate evaluation factor for the acquisition.

(4) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation.

(5) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor.

(6) If price is an evaluation factor, the solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

#### F. Evaluation Process

(1) General. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. All proposals shall be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(2) Evaluation methods. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.

(3) Cost or price evaluation. The responsible procurement officer shall document the cost or price evaluation. Price reasonableness shall be determined independently of cost or price evaluation.

(4) Past performance evaluation.

(a) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination.



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(b) The solicitation shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the stated requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. When evaluating an offeror's past performance, this information, as well as information obtained from any other sources, must be considered; however, the relevance of similar past performance information is a matter of business judgment.

(c) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(5) Technical evaluation. The source selection records shall include—

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

G. Exchanges with offerors.

(1) Control. The responsible procurement officer shall control all exchanges after opening and prior to award.

(2) Fairness and Impartiality. The responsible procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly-situated offerors shall be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(3) Clarifications. The responsible procurement officer may conduct clarifications at any time prior to the award decision.

(4) Competitive Range.

(a) After complying with Section 11-35-1535(G) (Evaluation), and before negotiating with anyone, the responsible procurement officer shall establish a competitive range comprised of the offerors that submitted the most promising offers.

(b) Ordinarily, the competitive range should not include more than three offerors. The responsible procurement officer may select only one offeror and may select more than three. The rationale for establishment of, and every modification to, the competitive range shall be determined in writing.

(c) Prior to conducting the minimum negotiations required by Section 11-35-1535(I)(3)(b)(i) and R.19-445.2099H(2), otherwise promising offerors should not be excluded from the competitive range due solely to deficiencies that are reasonably susceptible of correction.

(d) After conducting the minimum negotiations required by 11-35-1535(I)(3)(b)(i) and R.19-445.2099H(2), the responsible procurement officer may eliminate an offeror from the competitive range if the offeror is no longer considered to be among the most promising.

(e) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing.

H. Negotiations with offerors

(1) Negotiations – General.

(a) The responsible procurement officer shall participate in and control all negotiations.

(b) The primary objective of negotiation is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

(c) The State may use any method of communication.

(d) Prior to any negotiation session, the using agency must document its prenegotiation objectives with regard to each offeror in the competitive range.

(e) The responsible procurement officer shall prepare a record of each negotiation session.

(f) Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(g) The responsible procurement officer may not relax or change any material requirement of the solicitation during negotiation except by amendment in accordance with R.19-445.2099D.

(h) Negotiations may include pricing. The responsible procurement officer may state a price that the State is willing to pay for what has been offered and may tell an offeror its price standing.

(i) Subject to the following requirements, the scope and extent of negotiations are a matter of the responsible procurement officer's judgment:

- (i) Section 11-35-30 (Obligation of Good Faith);
- (ii) R.19-445.2099G(2) (Fairness and Impartiality); and
- (iii) R.19-445.2099H(2) (Minimum Negotiations).

(j) The State may engage in more than one session with an offeror if necessary. Subject to R.19-445.2099G(2), the conduct of multiple sessions with a particular offeror does not require the conduct of multiple sessions with other offerors.

(k) Throughout the competitive negotiation process, state personnel shall not disclose the content of any offeror's proposal to any other offeror.

(l) State personnel shall not promise that the State will select an offeror for award if it makes a particular change or set of changes to its offer.

(2) Negotiations – Minimum – Problem Identification

The State shall negotiate with each offeror in the competitive range. At a minimum, the State shall identify and seek the correction of any deficiency and the elimination of any other undesirable term in an offer.

(3) Negotiations – Enhancement.

(a) The responsible procurement officer may negotiate with offerors in the competitive range to seek changes in their offers that the State desires and to allow them to make other improvements.

(b) The responsible procurement officer may state specific terms that the State desires and seek improvements in already acceptable terms.

(4) Proposal Revisions.

(a) The responsible procurement officer may request or allow proposal revisions either (i) to clarify and document understandings reached during negotiations, or (ii) to provide offerors an opportunity to respond to an amendment.

(b) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(c) Upon the completion of all negotiations, the responsible procurement officer shall request that offerors still in the competitive range submit final offers not later than a specified common cutoff date and time that allows a reasonable opportunity for submission. When submitting final offers, an offeror may revise any aspect of its offer. The responsible procurement officer shall notify offerors that failure to submit a final offer by the common cutoff date and time will result in the consideration of their last prior offer. Requests for final offers shall advise offerors that final offers shall be in writing and that the government intends to make award without obtaining further revisions.

I. Limitations on exchanges. State personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals the names of individuals providing reference information about an offeror's past performance; or

(4) Knowingly furnishes source selection information in violation of Regulation 19-445.2010.

J. Tradeoff Process

(1) A tradeoff process is appropriate when it may be in the interest of the State to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(2) This process permits tradeoffs among cost or price and non-cost factors and allows the State to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file.

K. Award

(1) Unless there is a compelling reason to reject proposals, award must be made to the responsible offeror whose final proposal meets, in all material respects, the requirements announced in the solicitation, as amended, and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non-price factors. Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation.

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(2) The contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(3) The contract file must document who performed the functions required by sections F, J, and K of R.19-445.2099 and which functions they performed.

### 19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

#### A. Authority.

(1) An agency may make small purchases not exceeding the limits prescribed in Section 11-35-1550 in accordance with the procedures in that section and herein.

(2) Any purchase of supplies, services, or information technology made pursuant to Section 11-35-1550 must be within the agency's certification.

(3) These simplified acquisition procedures shall not be used for items available under mandatory state term contracts (see R.19-445-2020B(1)).

(4) Contracts solely for the procurement of commercially available off-the-shelf products pursuant to Section 11-35-1550 are not subject to laws identified in Section 11-35-2040.

(5) When required, adequate public notice must comply with R.19-445.2000F.

(6) Section 11-35-4210(1)(d) makes the protest process inapplicable to contracts with an actual or potential value of up to \$50,000. Because the protest process applies to all small purchases in excess of \$50,000, notice of an award must be communicated to all bidders on the same date award is made and must be documented in the procurement file. Any method of communication may be used.

#### B. Purchases pursuant to Section 11-35-1550(2)(b) (Three Written Quotes).

(1) If an agency does not receive responsive quotes from at least three responsible bidders, adequate public notice must be given and documented with the purchase requisition. So-called "no bids" are not bona fide and do not count as one of the three.

(2) Requests for quotes must be distributed equitably among qualified suppliers, unless adequate public notice is given in South Carolina Business Opportunities.

#### C. Purchases pursuant to Section 11-35-1550(2)(c) (Advertised Small Purchase) may be made by giving adequate public notice in South Carolina Business Opportunities and:

(1) issuing a written solicitation for written quotes, as described in Section 11-35-1550(2)(c);

(2) soliciting bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) soliciting proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

D. When conducting a small purchase over twenty-five thousand dollars for which adequate public notice is required, potential offerors must be provided reasonable time to prepare their bids, no less than seven (7) days after such notice is provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency, the appropriate chief procurement officer, or the designee of either.

#### E. Establishment of Blanket Purchase Agreements.

(1) General. A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or information technology under such agreements.

(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

(a) Description of agreement. A statement that the supplier shall furnish supplies, services, or information technology, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

(b) Extent of obligation. A statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(c) Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.

(d) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (1) name of supplier;
- (2) blanket purchase agreement number;
- (3) date of call;
- (4) call number;
- (5) itemized list of supplies, services, or information technology furnished;
- (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
- (7) date of delivery or shipment.

(e) Invoices one of the following statements:

(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

**F. Competition Under Blanket Purchase Agreement.**

Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies, services, or information technology to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

**G. Calls Against Blanket Purchase Agreement.**

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

**H. Receipt and Acceptance of Supplies or Services.**

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

**I. Review Procedures.**

The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.

**19-445.2105. Sole Source Procurements.**

**A. Application.**

The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

**B. Exceptions.**

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Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) [Repealed]
- (4) [Repealed]
- (5) where the item is one of a kind; and
- (6) [Repealed]

### C. Written Determination.

The determination as to whether a procurement shall be made as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either office above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials Management Officer. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a governmental body that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision. The determination must be authorized prior to contract execution.

### D. Notice.

(1) Compliance with the notice requirements in Section 11-35-1560(A) must be documented in the procurement file.

(2) The public notice required by Section 11-35-1560(A) must include the written determination required by Section C(2) above or instructions how to obtain the written determination immediately upon request.

## 19-445.2110. Emergency Procurements.

### A. Application.

The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

### B. Definition.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of State government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

### C. Limitations.

Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.

### D. Conditions.

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement.

### E. Selection of Method of Procurement.

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

### F. Notice.

Compliance with the notice requirements in Section 11-35-1570(B) must be documented in the procurement file.

G. Written Determination.

The Chief Procurement Officer or the head of the purchasing agency or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

19-445.2115. Information Technology Procurements.

A. Reserved.

B. Reserved.

C. Software Licensing

Pursuant to Section 11-35-510, the Information Technology Management Officer may execute an agreement with a business on behalf of, and which binds all, governmental bodies in order to establish the terms and conditions upon which computer software may be licensed, directly or indirectly, from that business by a governmental body. Such an agreement may provide for the voluntary participation of any other South Carolina public procurement unit. Such agreements do not excuse any governmental body from complying with any applicable requirements of the Procurement Code and these Regulations, including the requirements of Section 11-35-1510.

19-445.2120. Cost or Pricing Data.

A. Definitions

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited, at least two responsive and responsible offerors independently compete for a contract, and price is a substantial factor in the evaluation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(2) Commercial product has the meaning stated in Section 11-35-1410(1).

(3) Established catalog price has the meaning stated in Section 11-35-1410.

(4) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(5) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

B. Thresholds

(1) Section 11-35-1830(1)(a) applies where the total contract price exceeds five hundred thousand dollars.

(2) Section 11-35-1830(1)(b) applies where the pricing of any change order, contract modification, or termination settlement exceeds five hundred thousand dollars, unless the procurement officer determines in writing that such information is necessary to determine that the pricing is reasonable. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(3) Ordinarily, cost and pricing data should not be required for the acquisition of any item that meets the definition of commercial product, including any modification that does not change the item from a commercial product to a non-commercial product. The contractor may be required to submit cost or pricing data for commercial products or COTS only if the purchase or modification exceeds the thresholds established in this section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

C. Conditions of Waiver

The requirements of Section 11-35-1830 may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

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### D. Refusal to Submit Data

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

### 19-445.2125. Responsibility of Bidders and Offerors.

#### A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

#### B. Obtaining Information; Duty of Contractor to Supply Information.

At any time prior to award, the prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor; knowledge of personnel within the using or purchasing agency; commercial sources of supplier information; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

#### C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

#### D. Duty Concerning Responsibility.

(1) Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

(2) Consistent with Section 11-35-1529(3), the procurement officer must determine responsibility of bidders in competitive on-line bidding before bidding begins.

#### E. Written Determination of Nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

#### F. Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

#### G. Subcontractor responsibility.

(1) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the

procurement officer’s determination of the prospective prime contractor’s responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor’s responsibility.

(2) When it is in the state’s interest to do so, the procurement officer may directly determine a prospective subcontractor’s responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor’s responsibility shall be used by the procurement officer to determine subcontractor responsibility.

19-445.2127. Organizational Conflicts of Interest.

A.General.

(1) “Organizational conflict of interest” occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business’ objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor’s judgment; and
- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R.19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms “contractor” and “subcontractor” are defined by Section 11-35-310.

B.Providing systems engineering and technical direction. (1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

- (a) determining specifications or developing work statements,
- (b) determining parameters,
- (c) identifying and resolving interface problems,
- (d) developing test requirements,
- (e) evaluating test data,
- (f) supervising design,
- (g) directing other contractors’ operations, and
- (h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C.Preparing specifications or work statements.

(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.



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(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole source under R.19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is not waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State's interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency's senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body's authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R.19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

19-445.2135. Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is a contract for the acquisition of supplies, services, or information technology for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew. A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services for a period in excess of one year, where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start up costs.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Exceptions.

This Regulation 19-445.2135 applies only to contracts for supplies, services, or information technology and does not apply to contracts for construction.

## D. Conditions for Use.

(1) A multi-term contract may be used if, prior to issuance of the solicitation, the Procurement Officer determines in writing that:

(a) Special production of definite quantities or the furnishing of long term services are required to meet state needs; or

(b) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(3) The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

## E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;

(4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and,

(7) that, in the event of cancellation as provided in (E) (3) of this subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

## F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offerer to "buy in", that is give such bidder or offerer an undue competitive advantage in subsequent procurements.

## G. Maximum Contract Periods

Every contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

19-445.2141. Commercial Products.

## A. Definitions.

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(1) Commercial product has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

(2) Commercially available off-the-shelf product (“COTS”) has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

### B. General.

(1) Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements, and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R.19-445.2140D (Preference for commercially available products)).

(2) Consistent with Section 11-35-1535(A)(2), the competitive negotiations source selection method may not be used to acquire only commercially available off the shelf products.

### C. Price reasonableness.

(1) An advantage of COTS is that a competitive market, evidenced by substantial commercial sales, helps to determine price reasonableness. Substantial sales of a COTS product may establish catalog prices (see Section 11-35-1410) and market prices. Market prices are current prices that are established in the usual and ordinary course of trade between buyers and sellers (see R.19-445.2120A(3)). A characteristic of both catalog prices and market prices is that they can be substantiated from sources independent of the offeror—for example, through market research.

(2) “Items customarily sold in bulk” means products that are loaded and carried in bulk without mark or count. COTS does not include bulk materials, like fuel and grain, because the prices for those items fluctuate, making it difficult or impossible to rely on short-term pricing to establish price reasonableness for purchase contracts that may be for a longer term.

### D. Purchase description or specification.

The agency’s purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency’s specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency’s needs in these terms allows offerors to propose products that will best meet the State’s needs.

### E. Simplified purchasing procedures for COTS.

(1) Section 11-35-1550(2)(b) authorizes the use of simplified procedures for the acquisition of supplies and information resources in amounts up to \$100,000, if the responsible procurement officer reasonably expects, based on the nature of the supplies or information resources sought, and on market research, that offers will include only COTS. The purpose of these simplified procedures is to vest procurement officers with additional procedural discretion and flexibility, so that COTS acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the State and industry (see R.19-445.2100).

(2) The procurement officer should be aware of customary commercial terms and conditions when pricing COTS. COTS prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller’s liability, quantities ordered, length of the performance period, and specific performance requirements. The procurement officer should review the using agency’s standard contract terms and conditions, along with commercial terms appropriate for the acquisition of the particular item. The procurement officer should consider avoiding terms inconsistent with commercial practice, unless those terms are required by law (see R.19-445.2143) or are essential to the using agency’s requirements.

(3) Section 11-35-2040 provides that COTS purchases made using any of the simplified procedures of Section 11-35-1550 are exempt from a number of statutory provisions that vendors have complained are overly burdensome. The procurement officer should consider Section 11-35-2040 and R.19-445.2143 when preparing the solicitation or written request for quotes.

(4) Regulation 19-445.2120B(3) prohibits requiring cost or pricing data when acquiring a commercial product, including COTS, unless the purchase or modification exceeds the thresholds established in that section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

F. The appropriate Chief Procurement Officer may develop and issue guidance, including solicitation forms, which may be used by agencies acquiring COTS using small purchase procedures.

19-445.2143. Contract clauses and administration.

A. Contracts formed pursuant to the Consolidated Procurement Code are deemed to incorporate all applicable provisions thereof and the ensuing regulations.

B. Prohibited Terms. Unless otherwise specifically provided by or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

(1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230)

(2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140)

(3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45.

(4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050)

(5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050)

C. A material change is a change order or contract modification that is beyond the general scope of the original contract, such that the subject of the modification should be competitively procured absent a valid sole-source justification. Material changes are inconsistent with the underlying purposes and policies of this code. The appropriate Chief Procurement Officer may develop and issue guidance and procedures for evaluating whether a change order or modification is material.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

A. Definitions

(1) Designer, as used in these regulations, means a person who has been awarded, through the qualifications-based process set forth in Section 11-35-3220, a contract with the State for the design of any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(2) Builder, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State to construct (alter, repair, improve, or demolish) any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(3) Design-Builder, as used in these regulations, means a person who has been awarded a contract with the State for the design and construction of any infrastructure facility using the design-build project delivery method defined in Section 11-35-2910(7).

(4) DBO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, operation, and maintenance of any infrastructure facility using the design-build-operate-maintain project delivery method defined in Section 11-35-2910(9).

(5) DBFO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, finance, operation, and maintenance of any infrastructure facility using the design-build-finance-operate-maintain project delivery method defined in Section 11-35-2910(8).

(6) Guaranteed Maximum Price (GMP) means a price for all costs for the construction and completion of the project, or designated portion thereof, including all construction management services and all mobilization, general conditions, profit and overhead costs of any nature, and where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount.

(7) Independent Peer Reviewer means a person who has been awarded a contract with the State for an independent, contemporaneous, peer review of the design services provided to the State by a DBO or DBFO Producer. In the event the State does not elect to contract with the Independent Peer Reviewer proposed by the successful DBO or DBFO Producer, the Independent Peer Reviewer shall be selected as provided in Section 11-35-2910(11).

(8) Operator, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State for the routine operation, routine repair, and routine maintenance (Operation and Maintenance) of any infrastructure facility, as defined in Section 11-35-2910(13).

B. Choice of Project Delivery Method.

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(1) This Subsection contains provisions applicable to the selection of the appropriate project delivery method for constructing infrastructure facilities, that is, the method of configuring and administering construction projects which is most advantageous to the State and will result in the most timely, economical, and otherwise successful completion of the infrastructure facility. The governmental body shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the State's needs. Before choosing the project delivery method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the State.

### (2) Selecting An Appropriate Project Delivery Method.

In selecting an appropriate project delivery method for each of the State's Infrastructure Facilities, the governmental body should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all authorized project delivery methods, the comparative advantages and disadvantages of each, and how these methods may be appropriately configured and applied to fulfill State requirements. Additional factors to consider include:

(a) the extent to which the governmental body's design requirements for the Infrastructure Facility are known, stable, and established in writing;

(b) the extent to which qualified and experienced State personnel are available to the governmental body to provide the decision-making and administrative services required by the project delivery method selected;

(c) the extent to which decision-making and administrative services may be appropriately assigned to designers, builders, construction-managers at-risk, design-builders, DBO producers, DBFO producers, peer reviewers, or operators, as appropriate to the project delivery method;

(d) the extent to which outside consultants, including construction manager agent, may be able to assist the governmental body with decision-making and administrative contributions required by the project delivery method;

(e) the governmental body's projected cash flow for the Infrastructure Facility to be acquired (both sources and uses of the funds necessary to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle);

(f) the type of infrastructure facility or service to be acquired - for example, public buildings, schools, water distribution, wastewater collection, highway, bridge, or specialty structure, together with possible sources of funding for the infrastructure facility - for example, state or federal grants, state or federal loans, local tax appropriations, special purpose bonds, general obligation bonds, user fees, or tolls;

(g) the required delivery date of the infrastructure facility to be constructed;

(h) the location of the infrastructure facility to be constructed;

(i) the size, scope, complexity, and technological difficulty of the infrastructure facility to be constructed;

(j) the State's current and projected sources and uses of public funds that are currently generally available (and will be available in the future) to support operation, maintenance, repair, rehabilitation, replacement, and demolition of existing and planned infrastructure facilities;

(k) and, any other factors or considerations specified in the Manual for Planning of Execution of State Permanent Improvements, Part 11, or as otherwise requested by the State Engineer.

(3) Except for guaranteed energy, water, or wastewater savings contracts (Section 48-52-670), design-bid-build (acquired using competitive sealed bidding) is hereby designated as an appropriate project delivery method for any infrastructure facility and may be used by any governmental body without further project specific justification.

### (4) Governmental Body Determination.

The head of the governmental body shall make a written determination that must be reviewed by the State Engineer. The determination shall describe the project delivery method (Section 11-35-3005), source selection method (Section 11-35-3015 and 11-35-1510), any additional procurement procedures (11-35-3023 and 11-35-3024(2)(c)), and types of performance security (Sections 11-35-3030 and 11-35-3037) selected and set forth the facts and considerations leading to those selections. This determination shall demonstrate either reliance on paragraph (3) above, or that the considerations identified in paragraphs (1) and (2) above, as well as the requirements and financing of the project, were all considered in making the selection. Any determination to use a project delivery method other than design-bid-build must explain why the use of design-bid-build is not practical or advantageous to the State. Any determination to use any of the additional procedures allowed by

Section 11-35-3024(2)(c) must explain why the use of such procedures are in the best interests of the State. Any request to use the prequalification process in a design-bid-build procurement must be in writing and must set forth facts sufficient to support a finding that pre-qualification is appropriate and that the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances.

**C. Bonds and Security.**

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. The contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. In the case of construction under \$50,000, the agency may, upon written justification and with the approval of the Office of the State Engineer, allow the use of a "B+" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

**D. Architect Engineer, Construction Management and Land Surveying Services Procurement.**

(1) The Advertisement of Project Description

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Code Section 11-35-3220(2), Advertisement of Project Description.

(2) State Engineer's Office Review.

The Office of State Engineer will provide forms in the Manual for Planning and Execution of State Permanent Improvements Projects-Part II for use by governmental bodies in submitting a contract for approval pursuant to Section 11-35-3220(8) of the Code.

**E. Contract Forms.**

(1) Pursuant to Section 11-35-2010(2), the following contract forms shall be used as applicable, as amended by the State Engineer, and as provided in the Manual for Planning and Execution of State Permanent Improvements-Part II. Subject to the foregoing:

(a) If an agency conducts a competitive sealed bid to acquire construction independent of architect-engineer or construction management services, the governmental body may use a document in the form of AIA Document A701.

(b) If an agency acquires architect-engineer services independent of construction, the governmental body may use a document in the form of AIA Document B151.

(c) If an agency acquires construction independent of architect-engineer or construction management services, the governmental body may use documents in the form of ALA Document A101 and A201. Other contract forms may be used as are approved by the State Engineer.

(d) If an agency acquires architect-engineer services, construction management services, and construction on the same project, each under separate contract, the governmental body may use documents in the form of AIA Documents A101/CMa, A201/CMa, B141/CMa, and B801/CMa. This paragraph does not apply if an agency acquires both construction and construction management services from the same business under the same contract.

(2) With prior approval of the State Engineer, a governmental body may supplement the contract forms identified in paragraph (1), as they have been amended by the State Engineer.

(3) Paragraph (1) does not apply to a contract entered into pursuant to Sections 11-35-1530, 11-35-1550, 11-35-3230, or 11-35-3310.

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(4) For any contract forms specified herein, the Manual for Planning and Execution of State Permanent Improvements-Part II shall specify the appropriate edition or, if applicable, replacement form.

(5) For any contract forms not specified herein or otherwise required by law, the Manual for Planning and Execution of State Permanent Improvements-Part II may, without limitation, require the use of any appropriate contract document, standard industry contract form, standard state amendments to such documents or forms, or publish state specific contract forms. Absent contrary instructions in the Manual, the governmental body may use a contract written for an individual project.

(6) Construction under Procurement Code Section 11-35-1550 and 11-35-1530 may be in a format and description of services approved by the State Engineer.

### F. Manual for Planning and Execution of State Permanent Improvements Projects.

For the purpose of these Regulations and Code Section 11-35-3240, a manual of procedures to be followed by governmental bodies for planning and execution of state permanent improvement projects is prepared and furnished by the designated board office, and included in this regulation. Part II of this manual, covering the procurement of construction for the projects, will be the responsibility of the Office of the State Engineer.

### G. Prequalifying Construction Bidders.

In accordance with Section 11-35-3023, the State Engineer's Office shall develop procedures for a prequalification process and shall include it in the Manual for Planning and Execution of State Permanent Improvements-Part II. The provisions of Regulation 19-445.2132 shall apply to implement Section 11-35-3023.H. With regard to Section 11-35-3310, the State Engineer's Office will establish working procedures for indefinite quantity contracts for professional services, and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II. With regard to Section 11-35-3320, the State Engineer's Office will establish working procedures for task order contracts for construction services and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II.

### I. Construction Procurement-The Invitation for Bids.

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Section 11-35-3020(a), Invitation for Bids, The provisions of Regulation 19-445.2090(B) shall not apply to implement the requirements of Code Section 11-35-3020.

### J. Participation in Prior Reports or Studies.

(1) Before awarding a contract for a report or study that could subsequently be used in the creation of design requirements for an infrastructure facility or service, the procurement officer should address, to the extent practical, the contractor's ability to compete for follow-on work.

(2) Before issuing a request for proposals for an infrastructure facility or service, the procurement officer should take reasonable steps to determine if prior participation in a report or study could provide a firm with a substantial competitive advantage, and, if so, the procurement officer should take appropriate steps to eliminate or mitigate that advantage.

(3) In complying with items (1) and (2) above, the procurement officer shall consider the requirements of Section 11-35-3245 and the Manual for Planning and Execution of State Permanent Improvements, Part II.

### K. Additional Procedures for Design-Build; Design-Build-Operate-Maintain; and Design-Build-Finance-Operate-Maintain.

(1) Content of Request for Proposals. Each request for proposals (RFP) issued by the State for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain services shall contain a cover sheet that: (a) confirms that design requirements are included in the RFP, (b) confirms that proposal development documents are solicited in each offeror's response to the RFP, and (c) states the governmental body's determination for that procurement (i) whether offerors must have been prequalified through a previous request for qualifications; (ii) whether the governmental body will select a short list of responsible offerors prior to discussions and evaluations (along with the number of proposals that will be short-listed); and (iii) whether the governmental body will pay stipends to unsuccessful offerors (along with the amount of such stipends and the terms under which stipends will be paid).

(2) Purpose of Design Requirements. The purpose and intent of including design requirements in the RFP is to provide prospective and actual offerors a common, and transparent, written description of the starting point for the competition and to provide the State with the benefit of having responses from competitors that meet the same RFP requirements. In order to be effective, the governmental body must first come to understand and then

to communicate its basic requirements for the infrastructure facility to those who are considering whether they will participate in the procurement competition.

(3) Purpose of Requirement for Proposal Development Documents. The purpose and intent of including the requirement for submittal of proposal development documents in each RFP for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain is to provide actual offerors with a common, and transparent, written description of the finish point for the competition. To be responsive, each offeror must submit drawings and other design related documents that are sufficient to fix and describe the size and character of the infrastructure facility to be acquired, including price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements).

(4) Content of Request for Proposals: Evaluation Factors. Each request for proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain shall state the relative importance of (1) demonstrated compliance with the design requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements), and (6) other factors, if any by listing the required factors in descending order of importance (without numerical weighting), or by listing each factor along with a numerical weight to be associated with that factor in the governmental body's evaluation. Subfactors, if any, must be stated in the RFP and listed, pursuant to the requirements of this Regulation, either in descending order, or with numerical weighting assigned to each subfactor. The purpose and intent of disclosing the relative importance of factors (and subfactors) is to provide transparency to prospective and actual competitors from the date the RFP is first published.

(5) The Manual for Planning and Execution of State Permanent Improvement Projects - Part II must include guidelines for the proper drafting of design requirements, proposal development documents, and requests for proposals.

#### L. Errors and Omissions Insurance.

(1) For design services in design-bid-build procurements. A governmental body shall include in the solicitation such requirements as the procurement officer deems appropriate for errors and omissions insurance (commonly called "professional liability insurance" in trade usage) coverage of architectural and engineering services in the solicitation for design services in design-bid-build procurements.

(2) For design services to be provided as part of design-build procurements. A governmental body shall include in the solicitation for design-build such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build contracts in excess of \$25,000,000.

(3) For design services to be provided as part of design-build-operate-maintain and design-build-finance-operate-maintain procurements. A governmental body shall include in the solicitation for design-build-operate-maintain and design-build-finance-operate-maintain such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build-operate-maintain and design-build-finance-operate-maintain contracts in excess of \$25,000,000.

(4) For Construction Management (Agency) services. A governmental body shall include in the solicitation for construction management agency services such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage.

(5) Errors and omissions (or professional liability) insurance coverage for construction management services is typically not required when the governmental body is conducting a construction management at-risk procurement.

#### M. Other Security; Operations Period Performance Bonds.

##### (1) Purpose.

To assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services, the governmental body shall identify, in the solicitation, one or more of the other forms of security



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identified in Section 11-35-3037 that shall be furnished to the governmental body by the offerors (or bidders) in order to be considered to be responsive.

### (2) Operations Period Performance Bonds.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to provide, and upon award of the contract, to maintain in effect an operations period performance bond that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in the amount of 100% of that portion of the contract price that includes the cost of such operation and maintenance services during the period covered by the bond. In those procurements in which the contract period for operation and maintenance is longer than 5 years, the procurement officer may accept an operations period performance bond of five years' duration, provided that such bond is renewable by the contractor every five (5) years during the contract, and provided further, that the contractor has made a firm contractual commitment to maintain such bond in full force and effect throughout the contract term.

(b) The operations period performance bond shall be delivered by the contractor to the governmental body at the same time the contract is executed. If a contractor fails to deliver the required bond, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, award of the contract shall be made to the next ranked bidder (or offeror), or the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) Operations period performance bond shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the bond amount.

### (3) Letters of Credit to Cover Interruptions in Operation.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to post, and upon award of the contract shall post, and in each succeeding year adjust and maintain in place, an irrevocable letter of credit with a banking institution in this State that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the next 12 months.

(b) The letter of credit required under this Section shall be posted by the contractor at the same time the contract is executed, and thereafter, shall be annually adjusted in amount and maintained by the contractor. If an offeror or bidder fails to demonstrate in its offer that it is prepared to post the required letter of credit, the bid (or offer) shall be rejected, the bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror), as otherwise provided by these regulations. If the contractor fails to place and maintain the required letter of credit, the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) If required by the solicitation, letters of credit shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

### (4) Guarantees.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, the contractor and affiliated organizations (including parent corporations) shall provide a written guarantee that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the contract period.

(b) The written guarantee required under this Section shall be submitted by each offeror at the time the proposal is submitted. If the contractor fails to submit the required guarantee, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror) as otherwise provided by these regulations.

(c) If required by the solicitation, guarantees shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

**N. Construction Management At-Risk.**

(1) Absent the approval required by Section 11-35-2010, a contract with a construction manager at-risk may not involve cost reimbursement.

(2) Prior to contracting for a GMP, all construction management services provided by a construction manager at-risk must be paid as a fee based on either a fixed rate, fixed amount, or fixed formula.

(3) As required by Section 11-35-3030(2)(a)(iv), construction may not commence until the bonding requirements of Section 11-35-3030(2)(a) have been satisfied. Subject to the foregoing, bonding may be provided and construction may commence for a designated portion of the construction.

(4) In a construction management at-risk project, construction may not commence for any portion of the construction until after the governmental body and the construction manager at risk contract for a fixed price or a GMP regarding that portion of the construction. Prior to executing a contract for a fixed price or a GMP, a governmental body shall comply with Section 11-35-1830 and Regulation 19-445.2120, if applicable. For purposes of Section 11-35-1830(3)(a), adequate price competition exists for all components of the construction work awarded by a construction manager at-risk on the basis of competitive bids.

(5) When seeking competitive sealed proposals in a construction management at-risk procurement, the solicitation shall include a preliminary budget, and if applicable, completed programming and the conceptual design. The solicitation shall request information concerning the prospective offeror's qualifications, experience, and ability to perform the requirements of the contract, including but not limited to, experience on projects of similar size and complexity, and history of on-time, on-budget, on-schedule construction. The offeror's proposed fee may be a factor in determining the award.

(6) After all preconstruction services and final construction drawings have been completed, or prior thereto upon written determination by the procurement officer, a governmental body must negotiate with and contract for a GMP with a construction manager at-risk. If negotiations are unsuccessful, the governmental body may issue an invitation for bids, as allowed by this code, for the remaining construction.

(7) A governmental body shall have the right at any time, and for three years following final payment, to audit the construction manager at-risk to disallow and to recover costs not properly charged to the project. Any costs incurred above the GMP shall be paid for by the construction manager at-risk.

(8) A construction manager at-risk may not self-perform any construction work for which subcontractor bids are invited, unless no acceptable bids are received or a subcontractor fails to perform. Ordinarily, the contract with a construction manager at-risk should require the construction manager at-risk to invite bids for all major components of the construction work. Section 11-35-4210 does not apply to any subcontractor bid process conducted by a construction manager at-risk.

Document No. 4881

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
CHAPTER 61**

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

61-62. Air Pollution Control Regulations and Standards.

**Synopsis:**

The Department of Health and Environmental Control (Department) amends R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to adopt federal amendments to associated standards promulgated from January 1, 2018, through December 31, 2018. The Department also amends R.61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste

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Incineration Units, to clarify the applicability and scope of United States Environmental Protection Agency (EPA) emission guidelines provisions incorporated by the Department and ensure compliance with federal law.

Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

The EPA promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments to 40 CFR Parts 60 and 63 include revisions to New Source Performance Standards (NSPS) mandated by 42 U.S.C. Section 7411, and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories mandated by 42 U.S.C. Section 7412.

The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempted these amendments from General Assembly review as the Department promulgates these amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement was required.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

### Instructions:

Revise Regulation 61-62 as shown below. All other items and sections remain unchanged.

### Text:

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

#### Regulation 61-62.60, Subpart A, shall be revised as follows:

#### Subpart A - "General Provisions"

The provisions of 40 Code of Federal Regulations (CFR) Part 60 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 38	October 15, 1973	[38 FR 28565]
Revision	Vol. 39	March 8, 1974	[39 FR 9314]
Revision	Vol. 39	November 12, 1974	[39 FR 39873]
Revision	Vol. 40	April 25, 1975	[40 FR 18169]
Revision	Vol. 40	October 6, 1975	[40 FR 46254]
Revision	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 40	December 16, 1975	[40 FR 58418]
Revision	Vol. 40	December 22, 1975	[40 FR 59205]
Revision	Vol. 41	August 20, 1976	[41 FR 35185]
Revision	Vol. 42	July 19, 1977	[42 FR 37000]
Revision	Vol. 42	July 27, 1977	[42 FR 38178]

<b>40 CFR Part 60 Subpart A</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Revision	Vol. 42	November 1, 1977	[42 FR 57126]
Revision	Vol. 43	March 3, 1978	[43 FR 8800]
Revision	Vol. 43	August 3, 1978	[43 FR 34347]
Revision	Vol. 44	June 11, 1979	[44 FR 33612]
Revision	Vol. 44	September 25, 1979	[44 FR 55173]
Revision	Vol. 45	January 23, 1980	[45 FR 5617]
Revision	Vol. 45	April 4, 1980	[45 FR 23379]
Revision	Vol. 45	December 24, 1980	[45 FR 85415]
Revision	Vol. 47	January 8, 1982	[47 FR 951]
Revision	Vol. 47	July 23, 1982	[47 FR 31876]
Revision	Vol. 48	March 30, 1983	[48 FR 13326]
Revision	Vol. 48	May 25, 1983	[48 FR 23610]
Revision	Vol. 48	July 20, 1983	[48 FR 32986]
Revision	Vol. 48	October 18, 1983	[48 FR 48335]
Revision	Vol. 50	December 27, 1985	[50 FR 53113]
Revision	Vol. 51	January 15, 1986	[51 FR 1790]
Revision	Vol. 51	January 21, 1986	[51 FR 2701]
Revision	Vol. 51	November 25, 1986	[51 FR 42796]
Revision	Vol. 52	March 26, 1987	[52 FR 9781, 9782]
Revision	Vol. 52	April 8, 1987	[52 FR 11428]
Revision	Vol. 52	May 11, 1987	[52 FR 17555]
Revision	Vol. 52	June 4, 1987	[52 FR 21007]
Revision	Vol. 54	February 14, 1989	[54 FR 6662]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	December 13, 1990	[55 FR 51382]
Revision	Vol. 57	July 21, 1992	[57 FR 32338, 32339]
Revision	Vol. 59	March 16, 1994	[59 FR 12427, 12428]
Revision	Vol. 59	September 15, 1994	[59 FR 47265]
Revision	Vol. 61	March 12, 1996	[61 FR 9919]
Revision	Vol. 62	February 24, 1997	[62 FR 8328]
Revision	Vol. 62	September 15, 1997	[62 FR 48348]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 64	February 12, 1999	[64 FR 7463]
Revision	Vol. 65	August 10, 2000	[65 FR 48914]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 6, 2000	[65 FR 76350, 76378]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	February 6, 2001	[66 FR 9034]
Revision	Vol. 67	June 28, 2002	[67 FR 43550]
Revision	Vol. 68	April 14, 2003	[68 FR 17990]
Revision	Vol. 68	May 28, 2003	[68 FR 31611]
Revision	Vol. 69	July 8, 2004	[69 FR 41346]
Revision	Vol. 70	December 16, 2005	[70 FR 74870]
Revision	Vol. 71	June 1, 2006	[71 FR 31100]

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<b>40 CFR Part 60 Subpart A</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Revision	Vol. 71	July 6, 2006	[71 FR 38482]
Revision	Vol. 72	May 16, 2007	[72 FR 27437]
Revision	Vol. 72	June 13, 2007	[72 FR 32710]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	April 3, 2008	[73 FR 18162]
Revision	Vol. 73	May 6, 2008	[73 FR 24870]
Revision	Vol. 73	May 27, 2008	[73 FR 30308]
Revision	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	January 28, 2009	[74 FR 5072]
Revision	Vol. 74	October 6, 2009	[74 FR 51368]
Revision	Vol. 74	October 8, 2009	[74 FR 51950]
Revision	Vol. 74	December 17, 2009	[74 FR 66921]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 76	March 21, 2011	[76 FR 15372]
Revision	Vol. 76	March 21, 2011	[76 FR 15704]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	August 14, 2012	[77 FR 48433]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 79	April 4, 2014	[79 FR 18952]
Revision	Vol. 80	March 16, 2015	[80 FR 13671]
Revision	Vol. 81	June 3, 2016	[81 FR 35824]
Revision	Vol. 81	June 30, 2016	[81 FR 42542]
Revision	Vol. 81	August 29, 2016	[81 FR 59276, 59332]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	June 23, 2017	[82 FR 28561]
Revision	Vol. 82	July 17, 2017	[82 FR 32644]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

**Regulation 61-62.60, Subpart Cf, shall be revised as follows:**

**Subpart Cf - “Performance Standards and Compliance Times for Existing Municipal Solid Waste Landfills”**

(A) All designated facilities as defined at 40 CFR 60.31f must comply with the requirements of this subpart.

(B) The compliance times, emission guideline conditions and requirements, operational standards for collection and control systems, test methods and procedures, compliance provisions, monitoring requirements, reporting requirements, recordkeeping requirements, and specifications for active collection systems set forth in 40 CFR 60.32f through 60.40f, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein and applicable to each designated facility.

40 CFR Part 60 Subpart Cf			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 81	August 29, 2016	[81 FR 59276]

(C) 40 CFR 60.41f, Definitions, is adopted and incorporated by reference as if fully repeated herein, except as follows: the word “Administrator” as used in this subpart shall mean the Department of Health and Environmental Control, with the exception of the sections within this subpart that may not be delegated by the EPA.

(D) The following authorities will not be delegated to state, local, or tribal agencies:

(1) Approval of alternative methods to determine the NMOC concentration or a site-specific methane generation rate constant (k).

(2) [Reserved]

**Regulation 61-62.60, Subpart Ja, shall be revised as follows:**

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

The provisions of 40 CFR Part 60 Subpart Ja, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 Subpart Ja			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 73	June 24, 2008	[73 FR 35838]
Revision	Vol. 73	July 28, 2008	[73 FR 43626]
Revision	Vol. 73	September 26, 2008	[73 FR 55751]
Revision	Vol. 73	December 22, 2008	[73 FR 78546]
Revision	Vol. 73	December 22, 2008	[73 FR 78549]
Revision	Vol. 77	September 12, 2012	[77 FR 56422]
Revision	Vol. 78	December 19, 2013	[78 FR 76753]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

**Regulation 61-62.60, Subpart DDDD, shall be revised as follows:**

**Subpart DDDD - “Performance Standards and Compliance Times for Existing Commercial and Industrial Solid Waste Incineration Units”**

(A) Except as provided in (B) below, incineration units that meet all three criteria set forth in 40 CFR 60.2550(a)(1) through (a)(3) are subject to this subpart and must comply with all applicable requirements of this subpart.

(B) This subpart exempts the types of units described in paragraphs (a) through (j) of 40 CFR 60.2555, but some units are required to provide notifications. For purposes of this paragraph, the words “Administrator” and “Agency” as used in 40 CFR 60.2555 shall be replaced by “Department” and “EPA Administrator” respectively.

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(C) If the owner or operator of a CISWI unit or air curtain incinerator makes changes that meet the definition of modification or reconstruction after August 7, 2013, the CISWI unit becomes subject to 40 CFR Part 60, Subpart CCCC and Regulation 61-62.60, Subpart CCCC, and this subpart no longer applies to that unit.

(D) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this subpart, 40 CFR Part 60, Subpart CCCC and Regulation 61-62.60, Subpart CCCC do not apply to that unit. Such changes do not qualify as modifications or reconstructions under 40 CFR Part 60, Subpart CCCC or Regulation 61-62.60, Subpart CCCC.

(E) For purposes of this subpart, “you” means the owner or operator of a CISWI unit.

(F) Each owner or operator of an existing CISWI unit shall comply with the model rule standards, requirements, and provisions of 40 CFR Part 60, Subpart DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units), as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below:

<b>40 CFR Part 60 Subpart DDDD</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Original Promulgation	Vol. 65	December 1, 2000	[65 FR 75338]
Revision	Vol. 70	September 22, 2005	[70 FR 55568]
Revision	Vol. 76	May 18, 2011	[76 FR 28662]
Revision	Vol. 78	February 7, 2013	[78 FR 9112]
Revision	Vol. 81	June 23, 2016	[81 FR 40956]
Revision	Vol. 84	April 16, 2019	[84 FR 15846]

These standards, requirements, and provisions are hereby incorporated and adopted by reference as follows:

- (1) 40 CFR 60.2610 and 40 CFR 60.2615, Increments of Progress.
- (2) 40 CFR 60.2620, 40 CFR 60.2625, and 40 CFR 60.2630, Waste Management Plan, due no later than compliance date listed in Table 1 below.
- (3) 40 CFR 60.2635 through 40 CFR 60.2665, Operator Training and Qualification.
- (4) 40 CFR 60.2670 through 60.2680, Emission Limitations and Operating Limits.
- (5) 40 CFR 60.2690 through 60.2695, Performance Testing.
- (6) 40 CFR 60.2700 through 60.2706, Initial Compliance Requirements.
- (7) 40 CFR 60.2710 through 60.2725, Continuous Compliance Requirements.
- (8) 40 CFR 60.2730 through 60.2735, Monitoring.
- (9) 40 CFR 60.2740 through 60.2800, Recordkeeping and Reporting, including submission of waste management plan no later than compliance date listed in Table 1 below; with the exception of the following: all reports required under 40 CFR 60.2795(a), (b)(1), and (b)(2) must be submitted to the Department in addition to being sent to the EPA.
- (10) 40 CFR 60.2805, Title V Operating Permits.

(11) 40 CFR 60.2810 and 40 CFR 60.2850(b) through 60.2870, Air Curtain Incinerators.

(12) 40 CFR 60.2875, Definitions, except that the word “Administrator” shall mean the Department of Health and Environmental Control, with the exception of provisions within this subpart that may not be delegated by the EPA.

(13) 40 CFR Part 60 Subpart DDDD Table 1, modified as follows:

**TABLE 1 TO SUBPART DDDD OF PART 60 - COMPLIANCE SCHEDULES**

<b>Comply with compliance schedule</b>	<b>By this date</b>
Final compliance with performance standards	February 7, 2018.

(14) 40 CFR Part 60 Subpart DDDD Tables 2 through 9, retitled as follows:

(a) Table 2 to Subpart DDDD - Emission Limitations That Apply to Incinerators Before February 7, 2018;

(b) Table 3 to Subpart DDDD - Operating Limits for Wet Scrubbers;

(c) Table 4 to Subpart DDDD - Toxic Equivalency Factors;

(d) Table 5 to Subpart DDDD - Summary of Reporting Requirements;

(e) Table 6 to Subpart DDDD - Emission Limitations That Apply to Incinerators on and After February 7, 2018;

(f) Table 7 to Subpart DDDD - Emission Limitations That Apply to Energy Recovery Units After February 7, 2018;

(g) Table 8 to Subpart DDDD - Emission Limitations That Apply to Waste-Burning Kilns After February 7, 2018; and

(h) Table 9 to Subpart DDDD - Emission Limitations That Apply to Small, Remote Incinerators After February 7, 2018.

(G) For purposes of this subpart, the authorities referenced in 40 CFR 60.2542 will not be delegated to state, local, or tribal agencies.

**Regulation 61-62.60, Subpart OOOOa, shall be revised as follows:**

**Subpart OOOOa - “Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015”**

The provisions of 40 CFR Part 60 Subpart OOOOa, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 Subpart OOOOa</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Original Promulgation	Vol. 81	June 3, 2016	[81 FR 35824]
Revision	Vol. 83	March 12, 2018	[83 FR 10628]



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**Regulation 61-62.60, Subpart QQQQ, shall be revised as follows:**

### **Subpart QQQQ - “Standards of Performance For New Residential Hydronic Heaters And Forced-Air Furnaces”**

The provisions of 40 CFR Part 60 Subpart QQQQ, as originally published in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 Subpart QQQQ</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Original Promulgation	Vol. 80	March 16, 2015	[80 FR 13671]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

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

**Regulation 61-62.63, Subpart A, shall be revised as follows:**

### **Subpart A - “General Provisions”**

The provisions of 40 Code of Federal Regulations (CFR) Part 63 Subpart A, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 63 Subpart A</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Original Promulgation	Vol. 59	March 16, 1994	[59 FR 12430]
Revision	Vol. 59	April 22, 1994	[59 FR 19453]
Revision	Vol. 59	December 6, 1994	[59 FR 62589]
Revision	Vol. 60	January 25, 1995	[60 FR 4963]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 60	September 1, 1995	[60 FR 45980]
Revision	Vol. 61	May 21, 1996	[61 FR 25399]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 62	December 10, 1997	[62 FR 65024]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 63	May 13, 1998	[63 FR 26465]
Revision	Vol. 63	September 21, 1998	[63 FR 50326]
Revision	Vol. 63	October 7, 1998	[63 FR 53996]
Revision	Vol. 63	December 1, 1998	[63 FR 66061]
Revision	Vol. 64	January 28, 1999	[64 FR 4300]
Revision	Vol. 64	February 12, 1999	[64 FR 7468]
Revision	Vol. 64	April 12, 1999	[64 FR 17562]
Revision	Vol. 64	June 10, 1999	[64 FR 31375]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 67	February 14, 2002	[67 FR 6968]
Revision	Vol. 67	February 27, 2002	[67 FR 9156]
Revision	Vol. 67	April 5, 2002	[67 FR 16582]

<b>40 CFR Part 63 Subpart A</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Revision	Vol. 67	June 10, 2002	[67 FR 39794]
Revision	Vol. 67	July 23, 2002	[67 FR 48254]
Revision	Vol. 68	February 18, 2003	[68 FR 7706]
Revision	Vol. 68	April 21, 2003	[68 FR 19375]
Revision	Vol. 68	May 6, 2003	[68 FR 23898]
Revision	Vol. 68	May 8, 2003	[68 FR 24653]
Revision	Vol. 68	May 20, 2003	[68 FR 27646]
Revision	Vol. 68	May 23, 2003	[68 FR 28606]
Revision	Vol. 68	May 27, 2003	[68 FR 28774]
Revision	Vol. 68	May 28, 2003	[68 FR 31746]
Revision	Vol. 68	May 29, 2003	[68 FR 32172]
Revision	Vol. 68	May 30, 2003	[68 FR 32586]
Revision	Vol. 68	November 13, 2003	[68 FR 64432]
Revision	Vol. 68	December 19, 2003	[68 FR 70960]
Revision	Vol. 69	January 2, 2004	[69 FR 130]
Revision	Vol. 69	February 3, 2004	[69 FR 5038]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 69	April 19, 2004	[69 FR 20968]
Revision	Vol. 69	April 22, 2004	[69 FR 21737]
Revision	Vol. 69	April 26, 2004	[69 FR 22602]
Revision	Vol. 69	June 15, 2004	[69 FR 33474]
Revision	Vol. 69	July 30, 2004	[69 FR 45944]
Revision	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	April 15, 2005	[70 FR 19992]
Revision	Vol. 70	May 20, 2005	[70 FR 29400]
Revision	Vol. 70	October 12, 2005	[70 FR 59402]
Revision	Vol. 71	February 16, 2006	[71 FR 8342]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 71	July 28, 2006	[71 FR 42898]
Revision	Vol. 71	December 6, 2006	[71 FR 70651]
Revision	Vol. 72	January 3, 2007	[72 FR 26]
Revision	Vol. 72	January 23, 2007	[72 FR 2930]
Revision	Vol. 72	July 16, 2007	[72 FR 38864]
Revision	Vol. 72	October 29, 2007	[72 FR 61060]
Revision	Vol. 72	November 16, 2007	[72 FR 64860]
Revision	Vol. 72	December 26, 2007	[72 FR 73180]
Revision	Vol. 72	December 28, 2007	[72 FR 74088]
Revision	Vol. 73	January 2, 2008	[73 FR 226]
Revision	Vol. 73	January 9, 2008	[73 FR 1738]
Revision	Vol. 73	January 10, 2008	[73 FR 1916]
Revision	Vol. 73	January 18, 2008	[73 FR 3568]
Revision	Vol. 73	February 7, 2008	[73 FR 7210]
Revision	Vol. 73	March 7, 2008	[73 FR 12275]
Revision	Vol. 73	July 23, 2008	[73 FR 42978]

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40 CFR Part 63 Subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 73	December 22, 2008	[73 FR 78199]
Revision	Vol. 74	June 25, 2009	[74 FR 30366]
Revision	Vol. 74	October 28, 2009	[74 FR 55670]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 75	September 13, 2010	[75 FR 55636]
Revision	Vol. 76	February 17, 2011	[76 FR 9450]
Revision	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 17, 2012	[77 FR 22848]
Revision	Vol. 77	September 11, 2012	[77 FR 55698]
Revision	Vol. 78	January 30, 2013	[78 FR 6674]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 78	February 1, 2013	[78 FR 7488]
Revision	Vol. 78	June 20, 2013	[78 FR 37133]
Revision	Vol. 79	February 27, 2014	[79 FR 11228]
Revision	Vol. 79	March 27, 2014	[79 FR 17340]
Revision	Vol. 80	June 30, 2015	[80 FR 37365]
Revision	Vol. 80	August 19, 2015	[80 FR 50385]
Revision	Vol. 80	September 18, 2015	[80 FR 56699]
Revision	Vol. 80	October 15, 2015	[80 FR 62389]
Revision	Vol. 80	October 26, 2015	[80 FR 65469]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 80	December 4, 2015	[80 FR 75817]
Revision	Vol. 81	August 30, 2016	[81 FR 59800]
Revision	Vol. 82	January 18, 2017	[82 FR 5401]
Revision	Vol. 82	October 11, 2017	[82 FR 47328]
Revision	Vol. 82	October 16, 2017	[82 FR 48156]
Revision	Vol. 83	October 15, 2018	[83 FR 51842]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

Regulation 61-62.63, Subpart CC, shall be revised as follows:

**Subpart CC - “National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries”**

The provisions of 40 CFR Part 63 Subpart CC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart CC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 60	August 18, 1995	[60 FR 43260]
Revision	Vol. 60	September 27, 1995	[60 FR 49976]
Revision	Vol. 61	February 23, 1996	[61 FR 7051]
Revision	Vol. 61	June 12, 1996	[61 FR 29878]
Revision	Vol. 61	June 28, 1996	[61 FR 33799]
Revision	Vol. 62	February 21, 1997	[62 FR 7938]

40 CFR Part 63 Subpart CC			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 63	March 20, 1998	[63 FR 13537]
Revision	Vol. 63	May 18, 1998	[63 FR 27212]
Revision	Vol. 63	June 9, 1998	[63 FR 31361]
Revision	Vol. 63	August 18, 1998	[63 FR 44140]
Revision	Vol. 65	May 8, 2000	[65 FR 26491]
Revision	Vol. 65	July 6, 2000	[65 FR 41594]
Revision	Vol. 66	May 25, 2001	[66 FR 28840]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 74	October 28, 2009	[74 FR 55670]
Revision	Vol. 75	June 30, 2010	[75 FR 37730]
Revision	Vol. 76	July 18, 2011	[76 FR 42052]
Revision	Vol. 78	June 20, 2013	[78 FR 37133]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

**Regulation 61-62.63, Subpart LLL, shall be revised as follows:**

**Subpart LLL - “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry”**

The provisions of 40 CFR Part 63 Subpart LLL, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart LLL			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31898]
Revision	Vol. 64	September 30, 1999	[64 FR 52828]
Revision	Vol. 67	April 5, 2002	[67 FR 16614]
Revision	Vol. 67	December 6, 2002	[67 FR 72580]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	December 20, 2006	[71 FR 76518]
Revision	Vol. 75	September 9, 2010	[75 FR 54970]
Revision	Vol. 76	January 18, 2011	[76 FR 2832]
Revision	Vol. 78	February 12, 2013	[78 FR 10006]
Revision	Vol. 80	July 27, 2015	[80 FR 44771]
Revision	Vol. 80	September 11, 2015	[80 FR 54728]
Revision	Vol. 81	July 25, 2016	[81 FR 48356]
Revision	Vol. 82	June 23, 2017	[82 FR 28562]
Revision	Vol. 82	August 22, 2017	[82 FR 39671]
Revision	Vol. 83	July 25, 2018	[83 FR 35122]
Revision	Vol. 83	August 3, 2018	[83 FR 38036]

**Regulation 61-62.63, Subpart OOO, shall be revised as follows:**

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### Subpart 000 - “National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins”

The provisions of 40 CFR Part 63 Subpart 000, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart 000			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 65	January 20, 2000	[65 FR 3276]
Revision	Vol. 65	February 22, 2000	[65 FR 8768]
Revision	Vol. 68	June 23, 2003	[68 FR 37334]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 79	October 8, 2014	[79 FR 60898]
Revision	Vol. 83	October 15, 2018	[83 FR 51842]

**Regulation 61-62.63, Subpart UUU, shall be revised as follows:**

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

The provisions of 40 CFR Part 63 Subpart UUU, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart UUU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	April 11, 2002	[67 FR 17762]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	February 9, 2005	[70 FR 6930]
Revision	Vol. 71	April 20, 2006	[71 FR 20446]
Revision	Vol. 80	December 1, 2015	[80 FR 75178]
Revision	Vol. 81	July 13, 2016	[81 FR 45232]
Revision	Vol. 83	November 26, 2018	[83 FR 60696]

**Regulation 61-62.63, Subpart DDDDD, shall be revised as follows:**

### Subpart DDDDD - “National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Industrial Boilers and Process Heaters”

The provisions of 40 CFR Part 63, Subpart DDDDD as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart DDDDD			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 69	September 13, 2004	[69 FR 55218]
Revision	Vol. 70	December 28, 2005	[70 FR 76918]
Revision	Vol. 71	April 20, 2006	[71 FR 20445]

40 CFR Part 63 Subpart DDDDD			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 71	December 6, 2006	[71 FR70651]
Revision	Vol. 76	March 21, 2011	[76 FR 15608]
Revision	Vol. 76	May 18, 2011	[76 FR 28662]
Revision	Vol. 78	January 31, 2013	[78 FR 7138]
Revision	Vol. 80	November 20, 2015	[80 FR 72789]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

**Regulation 61-62.63, Subpart UUUUU, shall be revised as follows:**

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

The provisions of 40 CFR Part 63 Subpart UUUUU, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 Subpart UUUUU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 77	February 16, 2012	[77 FR 9304]
Revision	Vol. 77	April 19, 2012	[77 FR 23399]
Revision	Vol. 77	August 2, 2012	[77 FR 45967]
Revision	Vol. 78	April 24, 2013	[78 FR 24073]
Revision	Vol. 79	November 19, 2014	[79 FR 68777, 68795]
Revision	Vol. 80	March 24, 2015	[80 FR 15510]
Revision	Vol. 81	April 6, 2016	[81 FR 20172]
Revision	Vol. 82	April 6, 2017	[82 FR 16736]
Revision	Vol. 83	November 14, 2018	[83 FR 56713]

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Amendment of R.61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP).

Purpose: The EPA promulgated amendments to national air quality standards in 2018. The recent federal amendments include clarification, guidance, and technical revisions to requirements for NSPS mandated by 42 U.S.C. Section 7411, and for federal NESHAP for Source Categories mandated by 42 U.S.C. Section 7412. The Department, therefore, amends the aforementioned regulations to codify federal amendments to these standards promulgated from January 1, 2018, through December 31, 2018. Additionally, the Department amends R.61-62.60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law.

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

## 96 FINAL REGULATIONS

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

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

The EPA promulgates amendments to its air quality regulations throughout each calendar year. Federal amendments in 2018 included revised NSPS rules and NESHAPs for Source Categories. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure compliance with both state and federal regulations. The amendments also include revisions to R.61-62.60, Subparts Cf and DDDD, to clarify the applicability and scope of EPA emission guidelines provisions incorporated by the Department, and to ensure compliance with federal law, which requires Department implementation of these Subparts.

### DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the state or its political subdivisions resulting from these revisions. The adopted standards are already in effect and applicable to the regulated community as a matter of federal law, thus the amendments do not present a new cost to the regulated community. The amendments incorporate the revisions to the EPA regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The amendments benefit the regulated community by clarifying and updating the regulations and increasing their ease of use.

### UNCERTAINTIES OF ESTIMATES:

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

### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the amendments to R.61-62 provides continued protection of the environment and public health.

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

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