

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

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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.

2009 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	1/9	2/13	3/13	4/10	5/8	6/12	7/10	8/14	9/11	10/9	11/13	12/11
Publishing Date	1/23	2/27	3/27	4/24	5/22	6/26	7/24	8/28	9/25	10/23	11/27	12/25

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*.

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

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

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

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3202		SR33-2	Requirements for Licensure as a Physical Therapist	2/11/09	LLR - Board of Physical Therapy Examiners
3201		SR33-2	Mobile Dental Facilities and Portable Dental Operations	2/12/09	LLR - Board of Dentistry
3196		SR33-3	S.C. National Guard College Assistance Program	3/09/09	Commission on Higher Education
3207		SR33-3	Board of Veterinary Medical Examiners Chapter Revision	3/11/09	LLR - Bd of Veterinary Medical Examiners
3204		SR33-3	Licensing Standards for Continuing Care Retirement Communities	3/12/09	Department of Consumer Affairs
3199			South Carolina Trauma Care Systems	3/18/09	Department of Health and Envir Control
3206			Application, Renewal and Continuing Education	3/20/09	LLR - Board of Chiropractic Examiners
3209	R5	SR33-3	Operation of Public Pupil Transportation Services	4/07/09	State Board of Education
3214			Fire Prevention and Life Safety	4/22/09	LLR - Office of State Fire Marshal
3215			Fire Prevention and Life Safety for Special Occupancies	4/22/09	LLR - Office of State Fire Marshal
3216			Explosives	4/22/09	LLR - Office of State Fire Marshal
3217			Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	4/22/09	LLR - Office of State Fire Marshal
3218			Liquefied Petroleum (LP) Gas	4/22/09	LLR - Office of State Fire Marshal
3219			Fireworks and Pyrotechnics	4/22/09	LLR - Office of State Fire Marshal
3220			Fire Prevention and Life Safety in Local Detention Facilities	4/22/09	LLR - Office of State Fire Marshal
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3205			Tax Credits for Fortification Measures	5/13/09	Department of Insurance
3197			Annual Reporting Requirements for Designated Eligible Telecommunications Carriers	5/13/09	Public Service Commission
3203			Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds	5/13/09	Public Service Commission
3210			Licensing of Onsite Wastewater System Master Contractor	5/13/09	Department of Health and Envir Control
3198			Solid Waste Management: Demonstration-of-Need	5/13/09	Department of Health and Envir Control
4004			Federal Government Construction Contracts	5/13/09	Department of Revenue
4003			Donors and Goods Given Away for Advertising Purposes	5/13/09	Department of Revenue
3225			Hazardous Waste Management	5/13/09	Department of Health and Envir Control
4005			Deed Recording Fee	5/13/09	Department of Revenue
3223			Adjustment of Bills and Representation	5/13/09	Public Service Commission
4020			PC&N (Stretcher Vans)	5/13/09	Public Service Commission
3226			X-rays (Title B)	5/13/09	Department of Health and Envir Control
4036			Replacement of Life Insurance and Annuities	5/13/09	Department of Insurance
4035			Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values	5/13/09	Department of Insurance
4026			Procedures and Standards for Review of Charter School Applications	5/13/09	State Board of Education
4028			Charter School Appeals	5/13/09	State Board of Education
4029			Assessment Program	5/13/09	State Board of Education
4027			Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	5/13/09	State Board of Education
4019			Occupational Safety and Health Act	5/16/09	LLR-Occupational Safety and Health
4041			Pilot and Apprentice Age Limitations; Short Branch Qualifications; Pilot Functions and Responsibilities; and Penalties	5/16/09	LLR-Commissioners of Pilotage
4018			Board of Registration for Professional Engineers and Surveyors	5/16/09	LLR- Bd of Registration for Professional Engineers and Surveyors
4016			Environmental Health Inspections and Fees	5/16/09	Department of Health and Envir Control
3222			Interruption of Service, Computation of Time, and Service Between Parties of Record	5/18/09	Public Service Commission
4039			Designation of Asian Citrus psyllid as Plant Pest and Quarantine	5/20/09	Clemson University-State Crop Pest Comm.
4001			Plum Pox Virus Quarantine	5/20/09	Clemson University-State Crop Pest Comm.
4013			Standards for Licensing Nursing Homes	5/20/09	Department of Health and Envir Control
4040			Consumer Credit Counseling Requirements	5/21/09	Department of Consumer Affairs
4031			LIFE Scholarship & LIFE Scholarship Enhancement	5/22/09	Commission on Higher Education
4032			Need-based Grants Program	5/22/09	Commission on Higher Education
4033			Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement	5/22/09	Commission on Higher Education
4034			Determination of Rates of Tuition and Fees	5/22/09	Commission on Higher Education
4030			Public Swimming Pools	5/22/09	Department of Health and Envir Control
4017			Milk and Milk Products	5/27/09	Department of Health and Envir Control
3221			Statewide Criminal Gang Database	5/29/09	State Law Enforcement Division

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4043	Amend and Add Regulations to Chapter 67 to Reflect Changes in Title 42 Necessitated by the Approval of Act 111 on June 25, 2007	1/25/10	Workers' Compensation Commission
4049	Use and Dissemination of Test Results	1/25/10	State Board of Education
4022	Riverbanks Parks Commission	2/09/10	Riverbanks Parks Commission
4053	Enforcement of Pilot Statutes and Maritime Homeland Security	2/09/10	Commissioners of Pilotage
4052	Light Brown Apple Moth Quarantine	2/17/10	Clemson University-State Crop Pest Comm.
Permanently Withdrawn			
3166	SCDOT Chief Internal Auditor		Department of Transportation
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4014	Environmental Protection Fees	Tolled	Department of Health and Envir Control
4015	Environmental Protection Fees	Tolled	Department of Health and Envir Control

COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 3

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.htm>

DOC. No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
3184	Restructuring ATF Regulations - Pyrotechnic Safety	Labor, Commerce and Industry	Labor, Commerce and Industry
3202	Requirements for Licensure as a Physical Therapist	Medical, Military, Pub & Mun Affairs	Medical Affairs
3201	Mobile Dental Facilities and Portable Dental Operations	Medical, Military, Pub & Mun Affairs	Medical Affairs
3196	S.C. National Guard College Assistance Program	Education and Public Works	Education
3207	Board of Veterinary Medical Examiners Chapter Revision	Agriculture and Natural Resources	Labor, Commerce and Industry
3204	Licensing Standards for Continuing Care Retirement Communities	Medical, Military, Pub & Mun Affairs	Medical Affairs
3199	South Carolina Trauma Care Systems	Medical, Military, Pub & Mun Affairs	Medical Affairs
3206	Application, Renewal and Continuing Education	Medical, Military, Pub & Mun Affairs	Medical Affairs
3209	Operation of Public Pupil Transportation Services	Education and Public Works	Education
3214	Fire Prevention and Life Safety	Labor, Commerce and Industry	Labor, Commerce and Industry
3215	Fire Prevention and Life Safety for Special Occupancies	Labor, Commerce and Industry	Labor, Commerce and Industry
3216	Explosives	Labor, Commerce and Industry	Labor, Commerce and Industry
3217	Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	Labor, Commerce and Industry	Labor, Commerce and Industry
3218	Liquefied Petroleum (LP) Gas	Labor, Commerce and Industry	Labor, Commerce and Industry
3219	Fireworks and Pyrotechnics	Labor, Commerce and Industry	Labor, Commerce and Industry
3220	Fire Prevention and Life Safety in Local Detention Facilities	Labor, Commerce and Industry	Labor, Commerce and Industry
3213	Annual Audited Financial Reporting Regulation	Labor, Commerce and Industry	Banking and Insurance
3208	Contact Information from Traffic Stops	Education and Public Works	Transportation
3205	Tax Credits for Fortification Measures	Ways and Means	Banking and Insurance
3197	Annual Reporting Requirements for Designated Eligible Telecommunications Carriers	Labor, Commerce and Industry	Judiciary
3203	Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds	Labor, Commerce and Industry	Judiciary
3210	Licensing of Onsite Wastewater System Master Contractors	Agriculture and Natural Resources	Medical Affairs
3198	Solid Waste Management: Demonstration-of-Need	Agriculture and Natural Resources	Medical Affairs
4004	Federal Government Construction Contracts	Ways and Means	Finance
4003	Donors and Goods Given Away for Advertising Purposes	Ways and Means	Finance
3225	Hazardous Waste Management	Agriculture and Natural Resources	Medical Affairs
4005	Deed Recording Fee	Judiciary	Finance
3223	Adjustment of Bills and Representation	Labor, Commerce and Industry	Judiciary
4020	PC&N (Stretcher Vans)	Labor, Commerce and Industry	Judiciary
3226	X-rays (Title B)	Medical, Military, Pub & Mun Affairs	Labor, Commerce and Industry
4036	Replacement of Life Insurance and Annuities	Labor, Commerce and Industry	Banking and Insurance
4035	Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values	Labor, Commerce and Industry	Banking and Insurance
4026	Procedures and Standards for Review of Charter School Applications	Education and Public Works	Education
4028	Charter School Appeals	Education and Public Works	Education
4029	Assessment Program	Education and Public Works	Education
4027	Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	Education and Public Works	Education
4019	Occupational Safety and Health Act	Labor, Commerce and Industry	Medical Affairs
4041	Pilot and Apprentice Age Limitations; Short Branch Qualifications; Pilot Functions and Responsibilities; and Penalties	Labor, Commerce and Industry	Transportation
4018	Board of Registration for Professional Engineers and Surveyors	Labor, Commerce and Industry	Labor, Commerce and Industry
4016	Environmental Health Inspections and Fees	Agriculture and Natural Resources	Medical Affairs
3222	Interruption of Service, Computation of Time, and Service Between Parties of Record	Labor, Commerce and Industry	Judiciary
4039	Designation of Asian Citrus psyllid as Plant Pest and Quarantine	Agriculture and Natural Resources	Agriculture and Natural Resources
4001	Plum Pox Virus Quarantine	Agriculture and Natural Resources	Agriculture and Natural Resources
4013	Standards for Licensing Nursing Homes	Medical, Military, Pub & Mun Affairs	Medical Affairs
4040	Consumer Credit Counseling Requirements	Labor, Commerce and Industry	Banking and Insurance
4031	LIFE Scholarship & LIFE Scholarship Enhancement	Ways and Means	Education
4032	Need-based Grants Program	Ways and Means	Education
4033	Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement	Ways and Means	Education
4034	Determination of Rates of Tuition and Fees	Ways and Means	Education
4030	Public Swimming Pools	Agriculture and Natural Resources	Medical Affairs
4017	Milk and Milk Products	Agriculture and Natural Resources	Medical Affairs
3221	Statewide Criminal Gang Database	Judiciary	Judiciary
4042	Seasons, Bag Limits, Methods of Take and Special Use Restrictions on Wildlife Management Areas	Agriculture and Natural Resources	Fish, Game and Forestry
4043	Amend and Add Regulations to Chapter 67 to Reflect Changes in Title 42 Necessitated by the Approval of Act 111 on June 25, 2007	Labor, Commerce and Industry	Judiciary
4049	Use and Dissemination of Test Results	Education and Public Works	Education

4 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

4022	Riverbanks Parks Commission	Agriculture and Natural Resources	Fish, Game and Forestry
4053	Enforcement of Pilot Statutes and Maritime Homeland Security	Judiciary	Transportation
4052	Light Brown Apple Moth Quarantine		

Permanently Withdrawn

3166	SCDOT Chief Internal Auditor	Education and Public Works	Transportation
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Resolution Introduced to Disapprove

4014	Environmental Protection Fees	Agriculture and Natural Resources	Medical Affairs
4015	Environmental Protection Fees	Agriculture and Natural Resources	Medical Affairs

Executive Order No. 2009-02

WHEREAS, on March 1, 2009, the National Weather Service issued a Winter Storm Warning for the state with the potential to receive up to ten inches of snow in some areas;

WHEREAS, temperatures were forecast to drop below freezing making the road conditions hazardous; and

WHEREAS, these conditions posed a threat to the safety of the State's citizens; therefore, State offices in the counties of Anderson, Cherokee, Greenville, Spartanburg, Union, and York were closed all day on March 2, 2009, State offices in the counties of Abbeville, Chester, Chesterfield, Darlington, Edgefield, Fairfield, Greenwood, Kershaw, Lancaster, Laurens, Marlboro, McCormick, Newberry, Oconee, Pickens, and Saluda were delayed in opening until 1:00 p.m. on March 2, 2009, and State offices in the counties of Aiken, Calhoun, Lee, Lexington, Sumter, and Richland were delayed in opening until 10:00 a.m. on March 2, 2009. Due to the continuing threat posed by hazardous roadways, the opening of State offices in Anderson, Cherokee, Greenville, and Spartanburg counties were delayed until 10:00 a.m. on March 3, 2009.

NOW, THEREFORE, pursuant to S.C. Code Ann. § 8-11-57, all State employees absent from work in part as directed, on March 2, 2009, and March 3, 2009, due to the closing of State offices caused by hazardous weather conditions are hereby granted leave with pay.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 6th DAY OF
MARCH, 2009.**

MARK SANFORD
Governor

6 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication March 27, 2009, for the following projects. After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mrs. Sarah "Sallie" C. Harrell, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Aiken County

Transfer of ownership of the Cancer Care Institute of Carolina from Aiken Regional Medical Centers, Inc. to the Radiation Oncology Center of Aiken, LLC; purchase and installation of a second linear accelerator to be located in the radiation oncology suite
Radiation Oncology Center of Aiken, LLC
Aiken, South Carolina
Project Cost: \$9,718,071

Affecting Charleston County

Purchase of an intra-operative mobile O-Arm imaging system that will rotate between Operating Rooms (ORs) 6, 7 and 8 restricted to neurosurgical and spinal procedures
Bon Secours St. Francis Xavier Hospital
Charleston, South Carolina
Project Cost: \$1,204,524

Transfer of services from an existing office-based GI endoscopy facility with one (1) procedure room to an existing building adjacent to the facility in order to receive state licensure and Medicare certification as an Ambulatory Surgical Facility (ASF) and expand the current number of patient prep/recovery bays from two (2) to four (4)
West Ashley Endoscopy Center, LLC
Charleston, South Carolina
Project Cost: \$411,728

Affecting Georgetown County

Renovation for the addition of fifteen (15) psychiatric beds to be located at Georgetown Memorial Hospital
Georgetown Memorial Hospital
Georgetown, South Carolina
Project Cost: \$2,124,865

Affecting Greenville County

Renovation for the addition of a fourth fixed cardiac catheterization laboratory located in a modular building on the first floor adjacent to the existing cardiac catheterization area
Bon Secours St. Francis Health System, Inc. d/b/a ST. FRANCIS – downtown
Greenville, South Carolina
Project Cost: \$2,956,035

Addition of twenty-three (23) psychiatric beds by licensing fourteen (14) existing unlicensed beds and construction for nine (9) beds for a total of forty three (43) psychiatric beds and sixty-eight (68) residential treatment facility beds for children and adolescents

Chesnut Hill Mental Health Center, Inc. d/b/a Springbrook Behavioral Health System

Travelers Rest, South Carolina

Project Cost: \$750,030

Renovations for the replacement of the existing mobile Magnetic Resonance Imaging (MRI) unit with a 1.5T fixed MRI unit

Northeast Columbia Diagnostic Imaging

Greenville, South Carolina

Project Cost: \$2,523,022

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following projects and a proposed decision will be made within 60 days beginning March 27, 2009. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Les W. Shelton, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Aiken County

Establishment of a home health agency restricted to serve Aiken County

Intrepid USA Healthcare Services

Aiken, South Carolina

Project Cost: \$90,234

Affecting Anderson County

Upfit of shelled space for the addition of a fourth cardiac catheterization laboratory

AnMed Health Medical Center

Anderson, South Carolina

Project Cost: \$1,697,785

Change of licensure of three (3) previously approved skilled nursing beds to rehabilitation beds for a total bed capacity of forty (40) rehabilitation beds

AnMed Rehabilitation Hospital

Anderson, South Carolina

Project Cost: \$0

Affecting Bamberg County

Purchase and renovation (cosmetic refurbishment) of the existing eighty-eight (88) bed nursing home to include continued participation in the Medicaid and Medicare Programs

UniHealth Post-Acute Care of Bamberg

Bamberg, South Carolina

Project Cost: \$5,076,000

8 NOTICES

Affecting Charleston County

Renovation for the addition of an Elekta Gamma Knife to the Neuroscience Institute located on the first floor of the University Hospital
Medical University of South Carolina Medical Center
Charleston, South Carolina
Project Cost: \$6,571,875

Affecting Greenville County

Development of a Medical Office Building (MOB) to be located within the millennium campus, adjacent to the proposed millennium campus hospital on Laurens Road and Innovation Way, Greenville, South Carolina
St. Francis millennium
Greenville, South Carolina
Project Cost: \$14,329,789

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act.

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 April 27, 2009 to:

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

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

Class I

Advanced Environmental Services, Inc.
 Attn: Jason Johnson
 3619 Hobbs Rd
 Greensboro, NC 27410

EnviroAssessments
 Attn: Gary K. Sawyer
 9307 Monroe Rd, Ste K
 Charlotte, NC 28270

Class II.

Edge Solutions, Inc.
 Attn: Michael Burns
 PO Box 639
 Ravenel, SC 29470

DEPARTMENT OF REVENUE**ERRATA**

117-307.1 Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

During the 2008 session of the General Assembly, SC Regulation 117-307.1 was amended to reflect the increase in the general sales and use tax rate from 5% to 6% beginning June 1, 2007. However, the admissions tax rate cited three times in Question #16 of this regulation was inadvertently changed from 5% to 6%. The admissions tax rate, as established by SC Code Section 12-21-2420, is 5%.

This notice is being issued to correct these errors; therefore, Question #16 of SC Regulation 117-307.1 should read as follows:

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. The \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this answer:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

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Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is liable for the 6% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65 and the 6% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

WORKERS' COMPENSATION COMMISSION**NOTICE**

The South Carolina Workers' Compensation Commission is considering revising the fee for independent medical examinations (IMEs). Currently the maximum allowable payment for an independent medical examination is \$600.

The American Medical Association defines an independent medical examination, Physicians Current Procedural Terminology Code 99456, as a work related or medical disability examination by other than the treating physician that includes: completion of a medical history commensurate with the patient's condition; performance of an examination commensurate with the patient's condition; formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment; development of future medical treatment plan; and completion of necessary documentation/certificates and report.

The maximum allowable payment (MAP) represents the maximum amount that a provider can legally be paid for an independent medical exam. In instances where the provider's usual charge is lower than the MAP, or where the provider has agreed by contract with an employer or insurance carrier to accept discounts or fees lower than the Commission's MAP, payment is made at the lower amount.

Anyone interested in submitting comments or recommendations concerning the price for an IME should send their comments to the Kandee Johnson, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202-1715, or via email at kjohnson@wcc.sc.gov. To allow time for full consideration, comments must be submitted by April 30, 2009. If you have any questions regarding this issue, please contact Ms. Johnson at 803.737.5744 or at the email address above.

12 DRAFTING NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) is proposing to amend Regulation 61-62, *Air Pollution Control Regulations and Standards* and the South Carolina *Air Quality Implementation Plan* (State Implementation Plan or SIP). Interested persons are invited to present their views concerning these amendments in writing to Andrew O. Hollis, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by April 27, 2009, the close of the drafting comment period.

Synopsis:

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60, 61, 63 and 72 throughout each calendar year. Recent Federal amendments include clarification, guidance and technical amendments regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), NESHAP for Source Categories, and Permits Regulation, Subpart A, Acid Rain Program General Provisions.

The Department proposes to amend Regulations 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; 61-62.61, *National Emission Standards for Hazardous Air Pollutants*; 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; and 61-62.72, *Acid Rain*, to incorporate by reference recent Federal amendments promulgated during the period from January 1, 2008, through December 31, 2008.

The Department also proposes to amend Regulations 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, to adopt the Federal changes in the National Ambient Air Quality Standards (NAAQS) for the 8-hour primary and secondary standard for ozone, and rolling 3-month average primary and secondary standard for lead. The Department may also propose typographical corrections and clarifications to Regulation 61-62 as necessary.

Pursuant to S.C. Code Section, 1-23-120(H)(1) the proposed amendments in this Notice will not be more stringent than the current Federal requirements and thus do not require legislative review.

DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123
Statutory Authority: 1976 Code Section 50-15-40

Notice of Drafting:

The South Carolina Department of Natural Resources proposes to update the list of endangered species and non-game species in need of management in South Carolina to maintain compliance with federal law.

Any person interested may submit written comments to D. Breck Carmichael, Jr., Deputy Director, Wildlife & Freshwater Fisheries Division, S.C. Department of Natural Resources, Post Office Box 167, Columbia, SC 29202.

Synopsis:

The proposed amendments will change the composition of both the endangered species list and the list of species in need of management for South Carolina to comply with changes in federal law. The Department proposes to remove the American peregrine falcon and arctic peregrine falcon from the state list of endangered species; remove the Southern bald eagle from the state list of endangered species and add it to the list of species in need of management. In addition, the Department will change the listing of the Southern bald eagle to bald eagle to correct taxonomic nomenclature.

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Document No. 4067

SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY

CHAPTER 37

Statutory Authority: 1976 Code Sections 23-23-20 et seq. and 23-47-20

37-001 through 37-028. Law Enforcement Training

(Formerly 38-001 through 38-028)

37-060 through 37-076. E-911 System

(Formerly 38-060 through 38-076)

Preamble:

The General Assembly passed Act 317 and Act 335 (South Carolina Code §23-23-10, et seq.) separating the South Carolina Criminal Justice Academy (hereinafter, "CJA") from the Department of Public Safety (hereinafter, "DPS"). S.C. Code §23-23-10, et seq. requires CJA to train, certify, and evaluate certifiability of candidates for law enforcement certification in the state of South Carolina. The Act allows CJA to promulgate regulations as are necessary for the administration of Act 317. Additionally, S.C. Code §23-47-20(C)(15) requires CJA to promulgate regulations to provide for the training of telecommunications operators or dispatchers. The proposed regulations break CJA regulations out of Chapter 38, which is for DPS, and places them in Chapter 37. The proposed regulations also clean up the language used throughout the regulations that is inconsistent with the CJA being a stand alone agency and contains some substantive changes to various sections of the regulations.

Notice of Drafting for the proposed amendments was published in the State Register on January 23, 2009.

Section by Section Discussion

- 37-001 This section contains only clean up from CJA's split from DPS.
- 37-002 This section adds requirements for re-issuance of certification to law enforcement officers with regard to citizenship, whether they are in arrears in child support, and whether they are subject to an Order of Protection, Restraining Order, or Foreign Protection Order. It also specifically allows CJA to bring penalties against agencies that do not comply with the regulations.
- 37-003 This section primarily contains only clean up from CJA's split from DPS. It also allows all findings of good character to be subject to final approval by the Director of the Academy.
- 37-004 This section contains clean up from CJA's split from DPS and adds several things to the list defining misconduct.
- 37-005 No language changes.
- 37-006 This section contains only clean up.
- 37-007 This section contains only clean up from CJA's split from DPS.
- 37-008 This section removes equivalent training for military training and increases the times allowed under prior training with break in service. These increases in times allowed under prior training with break in service are due to a survey CJA made of other state's statutes/regulations regarding prior training with break in service and the needs of law enforcement agencies throughout the state.
- 37-009 This section primarily contains clean up from CJA's split from DPS.

- 37-010 This section contains only clean up from CJA's split from DPS.
- 37-011 This section changes the language from "traffic radar" to the more generic language of "speed measure device operator." This will allow and encompass other forms of speed measurement, such as LIDAR.
- 37-012 This section contains only clean up from CJA's split with DPS.
- 37-013 This section primarily contains clean up from CJA's split with DPS.
- 37-014 This section contains clean up from CJA's split with DPS and puts additional requirements on those submitting materials for CLEE approval.
- 37-015 This section contains clean up from CJA's split with DPS and gives officers called to military duty a long period of time to come back into compliance with regard to the CLEE than was previously given. This extension of time is proposed to bring these regulations more in line with federal law. This section also provides that officers who do not come back into compliance will have to return for training under the prior training break in service regulation. This section also allows for a longer period of medical disability or administrative leave. This section further allows for a penalty to be brought against agencies that do not comply with this regulation.
- 37-016 This section contains clean up from CJA's split from DPS and adds several things to the list defining misconduct.
- 37-017 This section contains only clean up from CJA's split from DPS.
- 37-018 This section primarily contains clean up from CJA's split from DPS and removes the requirement of notice of withdrawal of certification via certified mail, return receipt requested.
- 37-019 This section primarily contains clean up from CJA's split from DPS and removes the requirement of notice of withdrawal of certification via certified mail, return receipt requested. This section also will allow service of the notice at the officer's place of employment. This change is requested because CJA in many cases does not know the officer's home address.
- 37-020 This section contains only clean up from CJA's split from DPS.
- 37-021 This section primarily contains clean up from CJA's split from DPS.
- 37-022 This section primarily contains clean up from CJA's split from DPS.
- 37-023 This section contains only clean up from CJA's split from DPS.
- 37-024 This section contains only clean up from CJA's split from DPS.
- 37-025 This section contains only clean up from CJA's split from DPS.
- 37-026 This section contains only clean up from CJA's split from DPS.
- 37-027 This section contains only clean up from CJA's split from DPS.
- 37-028 This section adds definitions for "Agency," "Director," and "Academy."
- 37-060 This section contains only clean up from CJA's split from DPS.

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- 37-061 This section is new and establishes the Director's authority.
- 37-062 This section is new and sets out some of the requirements for issuance or re-issuance of certification.
- 37-063 This section is new and sets out the requirements for good character.
- 37-064 This section adds requirements for demonstrating a candidate for training is a person of good character.
- 37-065 No language changes.
- 37-066 This section is new and sets out reasons for denying certification based on misconduct.
- 37-067 This section is new and sets out that certification will occur upon successful completion of training.
- 37-068 This section contains clean up from CJA's split from DPS and sets up training requirements for certification, including keeping the grandfather provision for certification based on the date the regulations became effective at the time the grandfathering provision was added.
- 37-069 This section is new and sets out that training must take place within one year of hire unless specific circumstances apply.
- 37-070 This section is new and deals with prior training with a break in service. It also eliminates the prior break in service after certification section.
- 37-071 This section is new and deals with separation from employment.
- 37-072 This section is new and deals with withdrawal of certification.
- 37-073 This section is new and deals reporting of events requiring withdrawal of certification.
- 37-074 This section is new and deals with investigation of events requiring withdrawal of certification and notification of withdrawal of certification.
- 37-075 This section is new and deals with notification of withdrawal of certification.
- 37-076 This section is new and deals with confidentiality of notification of withdrawal of certification.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulations at a public hearing to be conducted by the South Carolina Criminal Justice Academy on April 29, 2009 to be held in room 140 (DL Lab) at 5400 Broad River Road, Columbia, South Carolina 29212. The meeting will commence at 10:00 a.m. at which time the Academy will consider oral comments noted in an agenda to be published ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy, are asked to provide written copies of their presentation for record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulations by writing to Brandy A. Duncan, General Counsel, South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina 29212. Written comments must be received no later than 5:00 p.m. on April 28, 2009. Written comments received will be considered by the staff in formulating the final proposed regulations for the public hearing on April 29, 2009, as noticed above. Written comments received by the deadline will be submitted to the South Carolina Criminal Justice Academy in summary of public comments for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

There will be minimal increased costs to the state with these changes and, in many cases, a decrease in costs to the state and its political subdivisions with these changes. Due to the changes regarding E-911 political subdivisions will see an increase in cost, however, the South Carolina Criminal Justice Academy is not able to predict this increase in cost due to lack of knowledge regarding the number of candidates that will require E-911 training.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATIONS:

Purpose: The purpose of these proposed changes is to clean up the language throughout the regulations so they reflect the split of CJA from DPS. Many of the other substantive changes are requested to bring the regulations in line with federal law, state law, or best practices as observed in our and other states.

Legal Authority: 1976 Code Sections 23-23-20 et seq. and 23-47-20(C)(15)

Plan for Implementation: The proposed regulations will take effect upon approval by the General Assembly and publication in the State Register.

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

The proposed regulations will clean up the language of the regulations to reflect the split of CJA from DPS, allow for more consistency in certification of law enforcement officers and E-911 operators, allow for more time to come back into compliance after a tour a military service, allow for longer breaks in service, and allow CJA to subject violators of the regulations to civil penalties.

DETERMINATION OF COSTS AND BENEFITS:

The law enforcement community will benefit by having longer breaks in service before having to return for retraining and by having consistency between the statutes (Training Act) and regulations. The law enforcement communications community will benefit by having consistent training for all communications operators.

UNCERTAINTIES OF ESTIMATES:

The CJA cannot predict how many E-911 operators will require E-911 training.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Not applicable.

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

Not applicable.

Statement of Rationale:

Revisions to these regulations are necessary to finalize the split of CJA from DPS and to make the regulations consistent with the statutes (Training Act).

Articles 1 and 3 of Chapter 38 of the Code of Regulations are redesignated as Articles 1 and 3 of Chapter 37 of the Code of Regulations and are amended as indicated in the text below. Articles 1 and 3 of Chapter 38 of the Code of Regulations are deemed repealed.

Text:

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

Document No. 4068

BOARD OF FUNERAL SERVICE

CHAPTER 57

Statutory Authority: 1976 Code Sections 32-8-300 et seq.

57-01. Definitions

57-06.1. Apprenticeship Requirements

57-14.1. through 57-14.4. Crematory Requirements

57-15. Inspection Guidelines

Preamble:

The South Carolina Board of Funeral Service proposes to amend current Regulation 57-01 and add Regulations 57-06.1, 57-14.1 through 57-15 to clarify and conform to the Funeral Service Practice Act. The proposed changes, among other things, will include updated procedures.

Section-by-Section Discussion

57-01. Definitions.

(A) Adds sentence to ensure director present when apprentice performing tasks.

(B)-(D) No substantive change.

(E)-(H) New definitions.

57-06.1. Apprenticeship requirements.

New section; adds requirements for funeral director and embalmer apprentices.

57-14.1. Records.

New section; adds provision for records kept at crematories.

57-14.2. Equipment and practices.

New section; adds required equipment for crematories and acceptable practice requirements for licensees.

57-14.3. Training of crematory operators.

New section; adds training for Certified Crematory Operators under certified crematory trainer/preceptors.

57-14.4. Training of certified crematory trainer/preceptors.

New section; adds requirements for the training of certified crematory trainer/preceptors.

57-15. Inspection guidelines.

New section; adds inspection requirements for Board crematory inspector to ensure compliance with statutory requirements.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Court at 9:00 a.m. Tuesday, May 12, 2009. Written comments may be directed to Doris Cubitt, Administrator, South Carolina Board of Funeral Service, Department of Labor, Licensing, and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m., Tuesday, April 28, 2009.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

The Board of Funeral Service has determined that amendment of current Regulation 57-01 and addition of Regulations 57-06.1, 57-14.1 through 57-15 is needed to clarify and conform to the Funeral Service Practice Act.

DESCRIPTION OF REGULATION:

Purpose: The Board is updating the regulations to conform to the Funeral Service Practice Act and to clarify existing regulations. The proposed changes, among other things, will include updated procedures.

Legal Authority: 1976 Code, 32-8-300, et seq.

Plan for Implementation: The amended regulations will take effect upon approval by the General Assembly and upon publication in the State Register. LLR will notify licensed operators of the amended regulations and post the amended regulations on the agency's web site.

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

The proposed regulations will prevent conflict between existing regulations and newer legislation. These changes will aid the licensees in understanding their responsibilities to the public.

DETERMINATION OF COSTS AND BENEFITS:

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

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning the regulation.

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EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment. These regulations contribute to the Board's function of protecting public health in the state of South Carolina.

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 Funeral Service proposes to amend current Regulation 57-01 and add Regulations 57-06.1, 57-14.1 through 57-15 to clarify and conform to the Funeral Service Practice Act. The proposed changes, among other things, will include updated procedures.

Text:

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

Document No. 4070

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

Preamble:

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the "Clean Air Mercury Rule" (CAMR). This final rule established standards of performance for mercury for new and existing coal-fired electric utility steam generating units (EGUs), as defined in the Clean Air Act (CAA) section 111. This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the South Carolina *State Register* (*State Register*) on June 22, 2007 (Vol. 31, Issue 6, Doc. No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These new subparts (40 CFR 63,

subparts JJJJ and KKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Vol. 28, Issue 9, Doc. No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This new subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT.” This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Vol. 29, Issue 8, Doc. No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

The South Carolina Department of Health and Environmental Control (Department or DHEC) proposes to amend R. 61-62, Air Pollution Control Regulations and Standards by removing the aforementioned provisions of the State CAMR in R. 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and R. 61-62.72, Acid Rain. The Department also proposes to amend R. 61-62.63, by removing all the provisions of the aforementioned rules published in the *Federal Register* May 16, 2003, and September 13, 2004.

Pursuant to S.C. Code Section, 1-23-120(H)(1), the proposed amendments will require legislative review.

Two Notices of Drafting for the proposed changes were published in the *State Register* on September 26, 2008 and November 28, 2008. Notice of the Department’s intent to draft these regulations was also published on the DHEC Regulatory Internet site in its *DHEC Regulation Development Update*. The drafting comment periods for the Notices ended on October 27, 2008, and December 29, 2008, respectively. Comments were received and addressed by the Department.

Discussion of Proposed Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

R. 61-62.60:

Subpart A has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

R. 61-62.60:

Subpart B has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606 and 71 FR 33388.

R. 61-62.60:

Subpart Da has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606, 70 FR 51266, and 71 FR 33388.

R. 61-62.60:

Subpart Db has been revised to remove previous amendments that incorporated by reference Federal amendments published in 71 FR 33388.

R. 61-62.60:

Remove and reserve Subpart HHHH.

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R. 61-62.63:

Remove and reserve Subpart DDDDD.

R. 61-62.63:

Remove and reserve Subpart JJJJ.

R. 61-62.63:

Remove and reserve Subpart KKKKK.

R. 61-62.72:

Subpart A has been amended to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

Notice of Staff Informational Forum and Public Comment Period:

Staff of the Department invite interested members of the public to attend a staff-conducted informational forum to be held on April 27, 2009, at 10:00 a.m. in room 3141 (Wallace Room) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to answer questions, clarify any issues, and receive comments from interested persons on the proposed amendments to R. 61-62. Please use the Bull Street entrance.

Interested persons are also provided an opportunity to submit written comments to Christopher L. Vaigneur at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on April 27, 2009, the close of the public comment period.

Comments received at the Forum and/or during the public comment period by the deadline requested above will be considered in formulating the final proposed regulation for public hearing before the Board of Health and Environmental Control (Board) as noticed below.

Public comments received during the comment period noticed above shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing as noticed below.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Christopher L. Vaigneur at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-3116. A copy may also be obtained on the Department's Regulatory Information Internet Site at <http://www.scdhec.gov/administration/regs/> in its *DHEC Regulation Development Update*. To access this document, click on the Air category, then scan down for this proposed amendment.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to comment on the proposed amendments to R. 61-62, at a public hearing to be conducted by the Board at its regularly-scheduled meeting on June 11, 2009. The public hearing is to be held in room 3420 of the Commissioner's Suite, third floor, Aycock Building of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department twenty-four hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation to the Clerk of the Board for inclusion into the record of the public hearing.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards.

Purpose: The Federal requirements that necessitated the amendments to R. 61-62, described herein, have been effectively vacated by decisions of the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals). Therefore, the Department proposes to amend the aforementioned regulations by removing the vacated provisions to ensure enforceability of State regulations and clarify requirements for compliance.

Legal Authority: The legal authority for R. 61-62, Air Pollution Control Regulations and Standards is S.C. Code Section 48-1-10 et seq.

Plan for Implementation: The proposed amendments will take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control, approval by the Legislature, and publication in the South Carolina *State Register* (*State Register*).

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

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the *State Register* on June 22, 2007 (Vol. 31, Issue 6, Doc. No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval. On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These new subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Vol. 28, Issue 9, Doc. No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

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On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This new subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT”. This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Vol. 29, Issue 8, Doc. No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

The Court of Appeals vacatur of the abovementioned rules effectively nullifies the Federal requirements established at the time of promulgation. The proposed amendments to remove these provisions from R. 61-62, are reasonable in that they ensure enforceability of State regulations and clarify the requirements for compliance.

DETERMINATION OF COSTS AND BENEFITS:

There will not be a negative fiscal or economic impact as a result of this regulatory action. Amending R. 61-62, to remove the provisions of the CAMR will decrease the cost to the regulated community and result in a reduction of the use of existing State resources. For more information on the original cost estimates and additional information, please refer to the promulgation of the State CAMR (*State Register* Vol. 31, Issue 6, Doc. No. 3083).

Amending R. 61-62, to remove the provisions of the vacated requirements of 40 CFR 63, subparts DDDDD, JJJJJ, and KKKKK will decrease the cost to the regulated community and result in the reduction of the use of existing State resources. Please refer to the promulgation of the abovementioned subparts (*State Register* Vol. 28, Issue 9, Doc No. 2913, and *State Register* Vol. 29, Issue 8, Doc No. 2980) for the original cost estimates and additional information.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to cost. These amendments will not create a burden for the public, the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no environmental or public health effect.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

There will be no specific detrimental effect on the environment and public health if the abovementioned amendments are not implemented.

Statement of Rationale:

Due to the Court of Appeals decisions in Cases No. 05-1097, 03-1202, and 04-1385 as described in the Statement of Need and Reasonableness above, the Department has determined it necessary to amend R. 61-62, to ensure enforceability of State regulations and to clarify requirements for compliance.

Text:

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

Document No. 4066
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, 38-72-60 and 38-72-70

69-44. Long Term Care Insurance

Preamble:

The South Carolina Department of Insurance proposes to amend Regulation 69-44, Long Term Care Insurance. The Long Term Care Insurance Model Regulation was recently updated by the National Association of Insurance Commissioners (NAIC). The model regulation implements additional safeguards designed to promote the availability of long term care insurance coverage and to protect applicants for long term care insurance from unfair or deceptive sales or enrollment practices. The amendments to Regulation 69-44 bring the long term care regulation into compliance with Federal law and will provide uniformity of regulation with other states who have adopted the model regulation.

Notice of drafting for the proposed regulation was published in the State Register on September 26, 2008.

Section-by-Section Discussion

The proposed regulation shall include the following sections:

SECTION CITATION:	SECTION TITLE	EXPLANATION
69-44, Section 1	Purpose	This section sets forth the purpose of the regulation. The regulation is designed to establish rules and standards for the sales and enrollment for long term care insurance products in this state.
69-44, Section 2	Authority	This section provides the authority for the regulation under Code Sections 38-72-60 and 38-72-70.
69-44, Section 3	Applicability and Scope	This section provides that it applies to all long term care insurance policies including qualified long term care contracts and life insurance policies that accelerate benefits for long term care.
69-44, Section 4	Definitions	This section provides definitions of terms used in the regulation. Terms such as applicant, exceptional increase, incidental, partnership policies or Partnership program and others are defined.
69-44, Section 5	Policy definitions	This section sets forth required definitions of terms used in the policy. Terms such as activities of daily living, acute condition, home health care services, skilled nursing care and others are defined.

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69-44, Section 6	Policy Provisions	Practices and	This section sets forth the requirements for the use of the terms guaranteed renewable and noncancellable and requires that further explanatory language be included in disclosure statements to applicants.
69-44, Section 7	Unintentional Lapse		This section provides that the issuer must receive from the applicant either a written designation of at least one person in addition to the applicant who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium or a written waiver signed by the applicant electing not to designate additional persons to receive notice.
69-44, Section 8	Required Provisions	Disclosure	This section provides individual long term care policies must contain a renewability provision and clearly state that the coverage is guaranteed renewable or noncancellable. Disclosure must also be made of any limitations with respect to preexisting conditions or other limitations or conditions for eligibility for benefits. Tax consequences must be disclosed for life insurance policies that provide an accelerated benefit for long term care. In the case of a qualified long term care policy, a disclosure statement must be included in the policy and outline of coverage that the policy is intended to be a qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended.
69-44, Section 9	Required Rating Consumer	Disclosure Practices to	This section provides that for policies that may have premium rate increases, issuers shall provide information to the applicant at the time of application or enrollment that the policy may be subject to rate increases in the future with an explanation of potential rate revisions and the policyholder's or certificate holder's option in the event of a rate revision. Notice of rate increases must be provided at least 45 days prior to the implementation of the rate increase.

69-44, Section 10	Initial Filing Requirements	This section provides that issuers must provide the Director with a copy of disclosure documents and an actuarial certification that the initial premium rate schedule is sufficient to cover anticipated costs and is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. The section further provides that the Director may request additional information in reviewing the actuarial certification.
69-44, Section 11	Prohibition Against Post Claims Underwriting	This section provides that applications for long term care products (except guaranteed issue) shall contain clear questions designed to ascertain the health condition of the applicant, including a listing of any medication prescribed by a physician. A statement on the application to the effect that false statements by the applicant on the application are grounds for the company to deny benefits or rescind the policy.
69-44, Section 12	Minimum Standards for Home Health and Community Care Benefits in Long Term Care Insurance Policies	This section sets forth the requirement that policies that provide benefits for home health care or community care services shall not limit or exclude benefits by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided or limiting eligible services to services provided by registered nurses or licensed practical nurses, by excluding coverage for personal care services provided by a home health aide or by requiring that the insured have an acute condition before home health care services are covered nor shall it exclude coverage of adult day care services. If coverage for home health care is provided, shall provide total home health care coverage that is dollar amount equal to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate.

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69-44, Section 13	Requirement to Inflation Protection	Offer	This section sets forth the requirement that the issuer must offer to the applicant the option to purchase a policy that provides for benefits levels to increase with benefit maximums or reasonable durations to account for anticipated increases in the costs of long term care services covered by the policy. The options must be no less favorable than: compounded annually at a rate not less than 5%; guarantees the insured the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined.
69-44, Section 14	Requirements for Application Forms and Replacement Coverage		This section sets forth the required questions to be included in applications which are designed to determine if the applicant has another long term care insurance policy or certificate. Disclosure notices are included to be provided to the applicant.
69-44, Section 15	Reporting Requirements		This section provides that insurers must maintain records for each agent of the amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long term care policies sold by the agent as a percentage of the agent's annual sales. This section also requires the insurer to submit an annual report to the Director by June 30 of the ten percent of its agents with the greatest percentage of lapses and replacements. A report must also be made by June 30 to the Director of the number of claims denied for each class of business for qualified long term care policies or contracts.
69-44, Section 16	Licensing		This section requires licensing pursuant to SC Code Section 38-43-10 et seq of producers to sell, solicit or negotiate long term care insurance.
69-44, Section 17	Powers of Director		This section authorizes the Director to waive or grant an exception to a specific provision of the regulation with respect to a specific long term care policy or certificate upon a finding that the modification would be in the best interest of the insureds

69-44, Section 18	Reserve Standards	and the purposes could not be effectively achieved without the waiver or exemption. This section provides that if long term care benefits are provided through the acceleration of benefits under group or individual life policies, policy reserves must be determined in accordance with S.C. Code § 38-9-180. The section further provides that if long term care benefits are provided other than the above, reserves are to be determined in accordance with Regulation 69-7.
69-44, Section 19	Loss Ratio	The section sets forth the relevant factors to be considered in evaluating the expected loss ratio. The benefits shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner providing for adequate reserving of the long term risk.
69-44, Section 20	Premium Rate Schedule Increases	This section applies to individual long term care policies or certificates issued on or after July 1, 2010. For certificates issued under a group long term care policy where the policy was in force at the effective date of this regulating, the provisions of this section shall apply on the policy anniversary following January 1, 2011. The section requires at least 30 days notice to the Director of a pending premium rate increase before the notice is sent to policyholders and must include certification by a qualified actuary that if the requested increase is implemented and the underlying assumptions are realized, that no further premium increases are anticipated. An actuarial memorandum justifying the rate schedule change request must be submitted that includes lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used to determine the projected values.
69-44, Section 21	Filing Requirement	This section sets forth the requirement that an issuer must file with the Director evidence that a group policy

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		or certificate offered pursuant to SC Code § 38-72-50 has been approved by a state having substantially similar requirements to those in SC.
69-44, Section 22	Filing Requirements for Advertising	This section sets forth that every issuer of long term care insurance or benefits must file a copy of any advertisement with the Director for review and that all advertisements must be retained by the issuer for at least 3 years from the date first used.
69-44, Section 23	Standards for Marketing	This section provides that issuers must establish marketing procedures and agent training to assure fair and accurate marketing activities.
69-44, Section 24	Suitability	This section does not apply to life insurance policies that accelerate benefits for long term care. The section requires issuers to develop and use suitability standards to determine whether the purchase or replacement of long term care insurance is appropriate for the needs of the applicant. Issuers must also provide training to its agents in the use of the suitability standards and retain a copy of the standards and make them available to the Director upon request. The section also requires issuers to report to the Director on an annual basis the total number of applications received from residents of SC and the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards and the number of those who chose to confirm after receiving a suitability letter.
69-44, Section 25	Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates	This section requires that in replacement of another long term care policy or certificate, the replacing insurer must waive any time periods applicable to preexisting conditions and probationary periods in the new long term care policy for similar benefits to the extent that those exclusions have been satisfied under the original policy.
69-44, Section 26	Availability of new Services or Providers	This section requires an issuer to notify policyholders of the availability of a new long term policy

		series that provides coverage for new services or providers. The issuer may make the new coverage available through a rider to the existing policy, by exchanging the existing policy for the new policy or by an alternative program that is filed with and approved by the Director.
69-44, Section 27	Right to Reduce Coverage and Lower Premiums	This section sets forth the requirement that every long term care policy and certificate shall include a provision allowing the person insured to reduce coverage and lower the premium. This section only applies to long term care policies issued in SC on or after January 1, 2011.
69-44, Section 28	Nonforfeiture Benefit Requirement	This section does not apply to life insurance policies with accelerated long term care benefits. The section sets forth the requirements that must be met regarding a nonforfeiture benefit. The offer must be in writing and must include a contingent benefit on lapse which is triggered every time an issuer increases the premium rates to a level which results in a cumulative increase of the annual premium as set forth in a table contained in the section.
69-44, Section 29	Standards for Benefit Triggers	This section provides that a long term care policy must condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility must not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.
69-44, Section 30	Additional Standards for Benefit Triggers for Qualified Long Term Care Insurance Contracts	This section provides additional definitions of terms such as qualified long term care services and chronically ill individual as defined in Section 7702B(d)(2) of the Internal Revenue Code. The section provides that certifications required may be performed by a licensed health care professional as is reasonably necessary with respect to a specific claim, but additional certifications may not be performed until after

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69-44, Section 31	Standard Format Outline of Coverage	expiration of the 90 day period of the first certification. This section prescribes a standard format and the content of the outline of coverage for a long term care policy or certificate. The use of the text provided and sequence of text of the standard format outline of coverage is mandatory unless otherwise specifically indicated.
69-44, Section 32	Requirement to Deliver Shopper's Guide	This section sets forth the requirement that a long term care insurance shopper's guide must be provided to all prospective applicants prior to the presentation of an application or enrollment form in the case of agent solicitations and must be presented in conjunction with an application or enrollment form in the case of direct response solicitations.
69-44, Section 33	Penalties	This section provides for fines to be levied against any insurer and any agent who is found to have violated any requirement relating the regulation of long term care insurance. Fines may be set up to three times the amount of any commissions paid for each policy involved in the violation or up to \$10,000 whichever is greater. These fines are in addition to any other penalties provided for by the statutes or regulations of this state.
69-44, Section 34	Effective Date	This section provides the effective date of the regulation.

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 May 27, 2009 at 2:00 P.M. in the Administrative Law Court, 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 regulation or any other information, and any requests for a public hearing, should be submitted to Rachel Harper, South Carolina Department of Insurance, P. O. Box 100105, Columbia, S.C. 29202-2105, on or before 5:00PM on April 27, 2009. Copies of the text of the proposed regulation for public notice and comment are available at www.doi.sc.gov.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Long Term Care Insurance

Purpose: The proposed regulation will update and provide additional safeguards to consumers who may purchase long term care insurance products.

Legal Authority: 1976 S.C. Code Ann. Sections 1-23-110 et seq., 38-3-110(2), 38-72-60 and 38-72-70

Plan for Implementation: The proposed regulation will be implemented by the S.C. Department of Insurance.

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

The proposed regulation is needed to provide additional safeguards for consumers purchasing long term care insurance products and to facilitate comparisons between various long term care insurance products.

DETERMINATION OF COSTS AND BENEFITS:

Promulgation of this regulation will not result in additional costs to the state or its political subdivisions. The proposed regulation will benefit our state by requiring certain disclosures and notices to consumers who purchase long term care insurance policies. Additional record keeping requirements have been included to ensure that insurers and producers comply with the requirements of the regulation.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed regulation will have no impact on the environment or public health. The anticipated public benefits of this proposed regulation include providing for additional safeguards to consumers in the purchase of long term care insurance products and providing for safeguards against the unintentional lapse of long term care insurance policies and certificates.

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

Promulgation of this regulation is crucial to updating the current long term care regulation to comply with recent state and federal law changes providing for additional safeguards and disclosures and providing for qualified long term care policies and certificates.

Statement of Rationale:

The Long Term Care Insurance Model Regulation was recently updated by the National Association of Insurance Commissioners (NAIC). The model regulation promotes the public interest by promoting the availability of long term care insurance coverage, protecting applicants for long term care insurance, as defined, from unfair or deceptive sales or enrollment practices, facilitating public understanding and comparison of long term care insurance coverages, and facilitating flexibility and innovation in the development of long term care insurance. The amendments to Regulation 69-44 bring the long term care regulation into compliance with State and Federal law and will provide uniformity of regulation with other states who have adopted the model regulation.

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Regulation 69-44 is modified as provided below.

Text:

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

Document No. 4071

DEPARTMENT OF INSURANCE

CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, and 38-71-530

69-46. Medicare Supplement Insurance

Preamble:

The Department of Insurance proposes to amend Regulation 69-46 in order to comply with the federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the federal Genetic Information Nondiscrimination Act of 2008 (GINA). This will ensure that South Carolina can maintain its regulatory functions regarding Medicare Supplement insurance and will bring the State's Medigap regulatory program into compliance with federal standards.

The proposed regulation is exempt from legislative review as it is being promulgated to comply with federal law.

Notice of drafting for the proposed regulation was published in the *State Register* on November 28, 2008.

Section-by-Section Discussion

The proposed regulation shall include the following sections:

SECTION CITATION:	SECTION TITLE	EXPLANATION
69-46, Section 1	Purpose	This section sets forth the purpose of the regulation which is to promote standardization of coverage and simplification of terms and benefits of Medicare supplement policies.
69-46, Section 2	Authority	This section sets forth the statutory authority for promulgation of the regulation.
69-46, Section 3	Applicability and Scope	This section provides that it applies to all Medicare supplement policies and certificates issued under group Medicare supplement policies delivered or issued for delivery in this state.
69-46, Section 4	Definitions	This section sets forth the definitions of terms used in the regulation such as: Applicant, creditable coverage, Medicare supplement policy and others.

69-46, Section 5	Policy Definitions and Terms	This section provides that policy definitions must conform to the definitions in this section.
69-46, Section 6	Policy Provisions	This section provides that no policy may be issued that contains limitations or exclusions on coverage that are more restrictive than those of Medicare.
69-46, Section 7	Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to May 1, 1992	This section sets forth the requirement that minimum standards for policies and coverage must be met. This section is retained for transitional purposes and governs all policies issued prior to May 1, 1992.
69-46, Section 8	Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After May 1, 1992 and Prior to June 1, 2010	This section sets forth the requirements for plans issued on or after May 1, 1992 and prior to June 1, 2010.
69-46, Section 8.1	Benefit Standards for 2010 Standardized Medicare Supplement benefit plan Policies or Certificates issued for Delivery on or After June 1, 2010	This section sets forth the requirements for plans issued after June 1, 2010.
69-46, Section 9	Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After May 1, 1992 and prior to June 1, 2010	Sets forth the requirements for plans issued subsequent to the adoption of 1990 Standardized benefit plans and prior to June 1, 2010. This is a transitional section and will not apply to plans issued after June 1, 2010.
69-46, Section 9.1	Standard Medicare Supplement Benefit Plans for 2010 standardized Medicare Supplement Benefit Plan Policies or Certificates issued for Delivery on or after June 1, 2010	Sets forth the requirements for plans issued after June 1, 2010.

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69-46, Section 10	Medicare Select Policies and Certificates	This section provides the requirements for Medicare Select Policies and certificates. Definitions of policy terms are provided and the issuer is required to file a proposed plan of operation with the Director.
69-46, Section 11	Open Enrollment	Sets forth the requirement for a period of open enrollment beginning during the 6 month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B.
69-46, Section 12	Guaranteed Issue for Eligible Persons	This section provides that Eligible persons as defined in the regulation may not be discriminated against due to health status, claims experience, receipt of health care or medical condition and no exclusion of benefits based on a preexisting condition may be applied.
69-46, Section 13	Standards for Claims Payment	Sets forth the requirements that must be met by issuers in payment of claims as set forth in the Social Security Act of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203.
69-46, Section 14	Loss Ratio Standards and Refund or Credit of Premium	Sets forth loss ratio standards and provides the method of calculation based on incurred claims experience or incurred health care expenses.
69-46, Section 15	Filing and Approval of Policies and Certificates and Premium Rates	Requires that policy forms must be filed with and approved by the Director prior to use.
69-46, Section 16	Permitted Compensation Arrangements	Sets forth the requirement that an issuer may provide commission or other compensation to an agent for the sale of a Medicare supplement policy only if the first year commission of no more than 200 percent of the commission paid for selling or servicing the policy in the second year.
69-46, Section 17	Required Disclosure Provisions	Sets forth general rules for disclosures when Medicare supplement policies

are sold or issued. Notice is required no later than 30 days prior to the annual effective date of any benefit changes.

69-46, Section 18	Requirements for Application Forms and Replacement Coverage	Provides a list of questions that must be included in application forms.
69-46, Section 19	Filing Requirements for Advertising	Sets forth the requirement that copies of any Medicare Supplement advertisements must be submitted to the Director for review to the extent required by state law.
69-46, Section 20	Standards for Marketing	Sets forth standards for issuers of Medicare Supplement policies to ensure fair and accurate comparison of policies and to assure that excessive insurance is not sold or issued.
69-46, Section 21	Appropriateness of Recommended Purchase and Excessive Insurance	Requires that an agent make reasonable efforts to determine the appropriateness of a recommended purchase or replacement of any Medicare Supplement policy or certificate.
69-46, Section 22	Reporting of Multiple Policies	Requires that on or before March 1 each year, an issuer must report the policy and certificate number and date of issuance grouped by individual policyholder when the issuer has in force more than one Medicare supplement policy or certificate on an individual.
69-46, Section 23	Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates	Requires replacing issuers to waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
69-46, Section 24	Prohibition Against Use of Genetic Information and Requests for Genetic Testing	This section applies to all policies with policy years beginning on or after May 21, 2009 and prohibits the denial or conditioning the issuance or effectiveness of the policy or certificate on the basis of genetic information and prohibits discrimination in the pricing of a policy or certificate based on genetic information with respect to the individual.

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69-46, Section 25	Severability	Sets forth that if any provision of this regulation is held to be invalid, the remainder of the regulation will not be affected.
69-46, Section 26	Effective Date	Sets forth the effective date.

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 May 19, 2009 at 10:00 A.M. in the Administrative Law Court, 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 regulation or any other information, and any requests for a public hearing, should be submitted to Rachel Harper, South Carolina Department of Insurance, P. O. Box 100105, Columbia, S.C. 29202-2105, on or before 5:00PM on April 27, 2009. Copies of the text of the proposed regulation for public notice and comment are available at www.doi.sc.gov.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Medicare Supplement Insurance

Purpose: Medicare Supplement Insurance is currently regulated by the Department of Insurance. Recent federal law enactments require that states adopt regulations containing these newly enacted federal standards so that the states may continue to regulate these products.

Legal Authority: S.C. Code Sections 38-3-110(2), 38-21-300, and 1-23-10 et seq.

Plan for Implementation: The proposed regulation will be implemented by the S.C. Department of Insurance.

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

The proposed regulation is needed to comply with Federal law.

DETERMINATION OF COSTS AND BENEFITS:

Promulgation of this regulation will not result in additional costs to the state or its political subdivisions. The proposed regulation will benefit our state by allowing the Department of Insurance to continue to regulate the Medicare Supplement insurance market.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed regulation will have no impact on the environment or public health. The anticipated public benefits of this proposed regulation include continued regulation of the Medicare Supplement insurance market by the Department of Insurance.

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

Promulgation of this regulation is crucial to maintaining the Department's ability to regulation the Medicare Supplement insurance products and market. The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the Genetic Information Nondiscrimination Act of 2008 (GINA) each require passage of the regulation so that states may continue to regulate the Medicare Supplement Insurance Market.

Statement of Rationale:

The Medicare Supplement Insurance regulation is being updated to comply with newly enacted Federal laws. The regulation includes additional consumer protections and disclosures when the sale of Medicare Supplement Insurance products are marketed and sold.

Text:

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

Document No. 4069
DEPARTMENT OF NATURAL RESOURCES
 CHAPTER 123
 Statutory Authority: 1976 Code Section 50-15-65

123-151. Regulations for Species or Subspecies of Non-game Wildlife

Preamble:

Act 179 (S452) was passed by the SC General Assembly and became law in February, 2008. This act established new alligator management options and specifies that the SC Department of Natural Resources will modify existing programs and create new programs for the management and harvest of alligators. Because there was not sufficient time to promulgate new regulations it was necessary to file emergency regulations that replaced the pre-existing 123-151 in order to implement the 2008 public hunt for alligators as intended by the 2008 SC General Assembly. These regulations will permanently replace 123-151 and will set the public alligator harvest program and other aspects of the depredation and nuisance alligator programs for years to come. The following is a section by section summary of the proposed regulation:

Section-by-Section Discussion

- A. This section specifies under what conditions alligators may be harvested and establishes methods of tagging.
- B. This section establishes the Depredation Program and specifies how the alligators and products from such may be handled.
- C. This section establishes the Private Lands Program and sets the criteria for harvest of alligators under such.
- D. This section establishes the Alligator Hunting Season and sets the criteria for harvest of alligators under such.

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E. This section sets the criteria under which alligator meat may be sold.

F. This section sets the criteria under which alligator hides and other parts may be sold, bartered or transferred.

G. This section sets the criteria under which finished alligator products may be sold.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code, as amended, such hearing will be conducted at 1000 Assembly Street on April 28, 2009, at 10:00 am in room 335, third floor, Rembert C. Dennis Building. Written comments may be directed to Breck Carmichael, Deputy Director, Wildlife & Freshwater Fisheries Division, Department of Natural Resources, Post Office Box 167, Columbia, SC 29202.

Preliminary Fiscal Impact Statement:

This amendment of Regulations 123-151 will result in increased public hunting opportunities which should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government. Further it will provide for the continued removal of alligators in nuisance and depredations situations, where needed.

Statement of Need and Reasonableness:

The statement of need and reasonableness was determined based on staff analysis pursuant to S.C. Code Sections 1-23-115(C) (1) through (3) and (9) through (11).

DESCRIPTION OF THE REGULATION:

Purpose: These regulations amend Chapter 123-151 in order to set seasons, bag limits and methods of hunting and taking of alligators on public and private lands. They also set the programs by which alligators are taken in depredation situations.

Legal Authority: Act 179 (S452) was passed by the SC General Assembly and became law in February, 2008. This act established new alligator management options and specifies that the SC Department of Natural Resources will modify existing programs and create new programs for the management and harvest of alligators. These regulations will permanently replace 123-151 and will set the public alligator harvest program and other aspects of the depredation and nuisance alligator programs for years to come.

Plan for Implementation: Once the regulation has been approved by the General Assembly, the Department will incorporate all regulations in the annual Rules and Regulations Brochure. The public will be notified through this publication and through news releases and other Department media outlets and publications.

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

This regulation meets the expectations of the new law and further meets the needs of the public and does not diminish the future of this valuable natural resource. This regulation has been modeled after regulations relating to alligator harvest in other southeastern states. It will allow the public to participate in the harvest of alligators thus accomplishing the conservations needs of the human and wildlife populations.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of the proposed regulation will not require any additional costs to the state or to the sporting community. Any costs to monitor the alligator resource and to plan for future alligator hunting seasons will be

funded through revenue generated from hunters participating in the hunting season. This amendment of Regulations

123-151 will result in increased public hunting opportunities that should generate additional State revenue through license sales and participation fees as prescribed in the new law. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

UNCERTAINTIES OF ESTIMATES:

Staff does not anticipate any increased costs with the promulgation of this regulation. Accordingly, no costs estimates and the uncertainties associated with them are provided.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The promulgation of this regulation will not have any impacts on public health; however, it may contribute to public safety by removing large alligators from areas where outdoor recreation occurs. Environmental impacts will be positive since the proposed regulation will result in additional opportunity for outdoor recreation for South Carolina's sportsmen and increased awareness and commitment for natural resources.

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

No detrimental impact on public health or the environment will occur if this proposed regulation is not implemented. Failure to implement this regulation will prevent positive benefits to the public.

Statement of Rationale:

Rationale for the formulation of these regulations is based on over 60 years of experience by SCDNR in establishing public hunting programs. Future alligator seasons and methods will be based upon public need and scientific data related to alligator populations and problems.

Text:

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

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Filed: March 9, 2009 9:31 am

Document No. 4064
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123

Statutory Authority: 1976 Code Sections 50-1-200, 50-1-220, 50-11-105, 50-11-520, 50-11-530, 50-11-2200 and 50-11-2210

123-40. Wildlife Management Area Regulations.

123-51. Turkey Hunting Rules and Seasons.

Emergency Situation:

These emergency regulations amend and supersede South Carolina Department of Natural Resources Regulation Numbers 123-40 and 123-51. These regulations set open and closed seasons, bag limits and methods of taking wildlife; define special use restrictions related to hunting and methods for taking wildlife on Wildlife Management Areas. Because the season for hogs begins on March 5 in some areas it is necessary to file these regulations as emergency.

Text:

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-40. Wildlife Management Area Regulations.

1.1 The following regulations amend South Carolina Department of Natural Resources regulation Numbers 123-40 and 123-51.

1.2. The regulations governing hunting including prescribed schedules and seasons, methods of hunting and taking wildlife, and bag limits for Wildlife Management Areas are as follows:

(G) Francis Marion National Forest

Wambaw WMA

Still Hog Hunts (no dogs) Archery, crossbows, centerfire rifles, muzzleloading rifles, centerfire handguns and shotguns with slugs only.	March 9 – March 21	No limit. Hogs may not be transported alive.
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Hog hunters are required to wear hat, coat or vest of solid international orange color while hunting. Hunters must obtain a hangtag for each vehicle daily from the Honey Hill lookout tower, Awendaw check station or U.S. Forest Service Wambaw Ranger Station. Hangtag must be accurately completed prior to and at the completion of each hunt and deposited at one of the above locations.

(VV) Bonneau Ferry WMA

Hog hunters are required to wear hat, coat or vest of solid international orange color while hunting. Hunters must sign in and sign out and record harvested hogs at the kiosk at the main entrance. Hunts from legal sunrise to legal sunset. Both Sides (A & B) are open to hog hunting with no youth restrictions.

Special Hog Hunt	March 5, 6, 20	Hogs only, no limit. Limit of 4
With dogs	May 7,8	bay or catch dogs per party,
One shotgun per party		hogs may not be transported alive.
(buckshot only) and		
centerfire handguns		

SUBARTICLE 3
OTHER BIG GAME

123-51. Turkey Hunting Rules and Seasons

AREA	DATES	LIMIT	Other Restrictions
Francis Marion Hunt Unit	April 1 - May 1	2	WMA Only
Tibwin Special Use Area	April 1 - May 1	2	Special hunts for youth or mobility impaired hunters as published by SCDNR.
Moultrie Hunt Unit	April 1 - May 1	2	Wed. & Sat. Only
Hall WMA	April 1 - May 1	2	
Santee Dam WMA	April 1 - May 1	2	
Hickory Top WMA	April 1 - May 1	2	
Pee Dee Station Site WMA	April 1 - May 1	1	Wed. & Sat. Only
			All hunters must pick up and return data cards at kiosk.
Great Pee Dee River WMA	April 1 - May 1	1	Wed. & Sat. Only
			All hunters must pick up and return data cards at kiosk.
Oak Lea WMA	April 1 - May 1	2	Wed. Only
Santee Coastal Reserve	April 1 - May 1	1/hunter	Special draw hunts for youth or mobility impaired hunters by SCDNR.
Longleaf Pine HP WMA	April 1 - May 1	2	Wed. & Sat. Only
Botany Bay Plantation WMA	April 1 - May 1	1/hunter	Youth hunting by draw only.
Belfast WMA	April 1 - May 1	1/hunter	Hunters selected by drawing.

2. The following Regulations apply statewide. No turkey hunting permitted on Turkey Restoration Sites which have not been formally opened by the Department.

a. During the spring turkey hunting season no game animal may be taken except turkey gobblers (bearded birds). During the fall turkey season both gobblers and hens may be taken.

b. Shotguns, muzzleloader shotguns, crossbows or bows and arrows are permitted, all other weapons and methods of taking are prohibited including rifles, pistols, hard jacketed bullets, buckshot and slugs.

c. Turkeys may not be hunted with dogs.

d. Live decoys are prohibited.

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Statement of Need and Reasonableness:

Periodically additional lands are made available to the public through the Wildlife Management Area Program. Since existing regulations only apply to specific wildlife management areas, new regulations must be filed to establish seasons, bag limits and methods of hunting and taking of wildlife on these new WMAs as well as expanding use opportunities on existing WMAs. Amendments are needed to allow additional opportunity. Because some hunts begin on March 5, it is necessary to file these regulations as emergency so they take effect immediately.

Fiscal Impact Statement:

This amendment of Regulation 123-40 and 123-51 will result in increased public hunting opportunities that should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

Document No. 3204
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
 Statutory Authority: 1976 Code Sections 37-11-10 et seq.

28-600. Licensing Standards for Continuing Care Retirement Communities

Synopsis:

The Department of Consumer Affairs is amending 23A S.C. Code Ann. R. 28-600 to provide greater detail of existing procedures, delete obsolete provisions, otherwise conform the Regulation to Title 37 Chapter 11 of the South Carolina Code, and clarify that contested case hearings shall be filed with the Administrative Law Court.

Instructions: Amend R. 28-600 by replacing it in its entirety with the following:

Text:

28-600. Licensing Standards for Continuing Care Retirement Communities.

A. Definitions and interpretations.

In addition to definitions contained in Section 37-11-20, the following definitions and interpretations apply:

- (1) "Act" as used in this regulation refers to State Continuing Care Retirement Community Act, Section 37-11-10 et seq.
- (2) "Administrator" means Administrator of the South Carolina Department of Consumer Affairs.
- (3) "Application processing fee" means those costs incurred by the operator in determining the financial, mental, and physical eligibility of an applicant for entrance into a facility.
- (4) "Binding financial commitments" for the purposes of the application of Section 37-11-140 means commitments from a financial institution or other similar entity for construction and long-term financing, or any other arrangement to achieve the same purpose.
- (5) "Binding reservation agreement" means an agreement for an acceptance of a binding reservation deposit. The agreement shall state, at a minimum:
 - (a) the amount of money received, and the total amount due;
 - (b) the rate of interest payable to the prospective resident, if any;
 - (c) the application of the deposit to the entrance fee, if any, when this reservation agreement is executed;
 - (d) a description of the living unit reserved;
 - (e) the location, name, and address of the facility or proposed facility, and the location, name, and address of the operator, if different;
 - (f) cancellation, penalties, and refund and escrow provisions.

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(6) "Binding reservation deposit" means a deposit with an operator of a sum of money in excess of One Thousand Dollars pursuant to a binding reservation agreement that assures a person a place in the facility.

(7) "Continuing care contract" means a contract or a series of contracts or agreements to provide services under Section 37-11-20(2) and (6). A continuing care contract may have other writings incorporated by reference.

(8) "Continuing care retirement community" also includes an equity project as long as the services under Section 37-11-20(2) and (6) are provided or available to residents.

(9) "Debt service" means all interest, lease payments, and principal payments on debt due in the next fiscal year.

(10) "Entrance fee" means an initial or deferred transfer to an operator of a sum of money or property, made or promised to be made as a full or partial consideration for acceptance by an operator as a resident. It includes a fee which is refundable upon death, departure or option of the resident. However, neither an accommodation fee, admission fee, or other fee of similar form and application, nor a security deposit shall be considered an entrance fee. An application processing fee covering reasonable costs of processing the application shall not be considered an entrance fee.

(11) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(12) "Equity project" means a continuing care retirement community wherein the residents are given an equity interest in the facility property or in a membership in a resident association, including those arrangements involving fee simple or stock ownership.

(13) "Health-related services" means any of the following:

(a) at a minimum, a priority for admission to a nursing home, community residential care facility or a similar facility or accommodation with a degree of services not required to be licensed by the Department of Health and Environmental Control. The conditions of such admission may range from a full coverage of care in an on-site nursing home, community residential care facility or other facility or accommodation at no additional charge to a priority admission to a nursing home, community residential care facility or other facility or accommodation either on or off the facility with services offered on a fee-for-service basis;

(b) assistance in the activities of a daily living. For the purposes of Section 37-11-10 et. seq., daily living activities, at a minimum, mean assisted or supervised walking, bathing, shaving, brushing teeth, combing hair, dressing; eating; getting in and out of bed; laundry; cleaning the room; self-administration of medication; recreational and leisure activities; or other similar activities, regardless of whether such services are offered as a part of monthly basic fee or on a fee-for-service basis, and regardless of whether or not such services are offered at a facility licensed by the Department of Health and Environmental Control; or

(c) system of managed health care.

(14) "Medical services" means, but is not limited to, any of the following:

(a) availability of consulting or supervisory services of a nurse; or

(b) availability of a certain number of in-patient days in a licensed community residential care facility or a nursing home, regardless of whether included in a monthly basic fee or paid for separately, and regardless of whether the service is offered on site or off site; or

(c) availability of services of health care personnel from the on site health care facility or a nursing home or contracted for by the facility; or

(d) availability of therapeutical services, regardless of whether included in a monthly basic fee or paid for separately.

(15) "Monthly basic fee" means any periodic charge required of a resident pursuant to a continuing care contract.

(16) "Staff" means the staff of the South Carolina Department of Consumer Affairs.

B. Letter of Non-applicability.

(1) Any entity which believes it is exempt from or not subject to the provisions of Section 37-11-10 et seq., in whole or in part, or which is contemplating a facility to provide housing and services to residents which it believes may not be subject to the Act, must apply to the department for a Letter of Non-applicability. The application shall be in writing, shall list the reasons why the existing or proposed facility may be exempt or not subject to the Act, and shall be accompanied by current or proposed continuing care contracts, representative samples of promotional materials, and, if applicable, residential guides and residential policy manuals. In addition, the application shall be accompanied by a One Hundred Dollar non-refundable fee, subject to change.

(2) Any communications from the department regarding the status of any facility which were made prior to July 1, 1991, have no legal effect and cannot be used as a substitute for a Letter of Non-applicability under this Section.

(3) In the event the department shall determine that the facility is not subject to the Act, it shall issue a Letter of Non-applicability setting forth the facts upon which its determination is based.

(4) A Letter of Non-applicability issued under subsection (3) of this Section shall be valid only upon the facts submitted. Whenever there is any subsequent change in these facts that might affect the status of such facility, the facility must apply for a new Letter of Non-applicability.

(5) In the event the department shall determine that such facility is subject to the provisions of the Act, it shall deny the request for the Letter of Non-applicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings. The One Hundred Dollar nonrefundable fee will thereafter be applied towards the license application fee. Any person who is aggrieved by the determination by the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

(6) In the event the facility does not wish to contest the decision of applicability, the facility shall submit an application for an appropriate license within thirty days from the date the Letter of Applicability was mailed by the department.

C. Preliminary license.

(1) A continuing care retirement community which has not yet been in operation may not collect binding reservation deposits for continuing care or advertise as a continuing care retirement community without a preliminary license issued by the department. The application for a license will be on a form

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prescribed by the department. The application shall be accompanied by a feasibility study. If the operator cannot yet obtain a feasibility study, it shall instead submit a comparable substitute prepared by its consulting firm. In such a case the operator shall first inform the department of the unavailability of and the nature of the substitute study and apply with the department for an approval of such substitute.

(2) Operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application.

(3) The feasibility study or its approved substitute shall include at least the following information:

(a) A statement of the purpose and need for the facility;

(b) A description of the proposed facility, including the location, size, number of units to be constructed, anticipated completion date, and the proposed construction program;

(c) An identification and evaluation of the primary market areas and assumptions as to the secondary market areas, as well as the proposed unit sales per month;

(d) Projected revenues, including anticipated entrance fees; monthly service fees; nursing care rates, if applicable; and all other sources of revenue, including the total amount of financing required;

(e) Projected expenses, including staffing requirements and salaries; cost of property, plant and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses;

(f) Current assets and liabilities of the applicant;

(g) Expectations of the financial condition of the facility, including the projected cash flow and a projected balance sheet and an estimate of the funds anticipated to be necessary to cover start-up losses;

(h) The inflation factor, if any, assumed in the study for the proposed facility and how and where it is applied;

(i) Financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies for continuing care retirement communities promulgated by the Actuarial Standards Board, and an independent evaluation and opinion by the consultant who prepared the study of the underlying assumptions used a basis for the forecasts or projections in the study. The study shall take into account facility costs, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors which affect the feasibility of the study;

(j) An opinion letter prepared by the person who prepared the study as to the financial feasibility of the facility;

(k) The name, address and phone number of the person who prepared the feasibility study and the experience of such person in preparing similar studies or otherwise consulting in the field of continuing care;

(l) A statement of financial responsibility as required in R. 28-600Q.

(4) The department shall approve the feasibility study or its approved substitute when it determines that:

(a) A reasonable financial plan has been developed for constructing the facility;

- (b) A market analysis supports the existence of the market and the need for the facility;
- (c) The feasibility study was prepared by an authority acceptable to the department.

(5) In addition to the feasibility study or its approved substitute, the application for a preliminary license shall contain the following information:

- (a) Items specified in Section 37-11-30(B)(1), (2), (3) and (4);
- (b) Copies of the articles of incorporation, constitution and bylaws with all amendments thereto, if the operator is a corporation; copies of all instruments by which the trust is created or declared, if the operator is a trust; copies of the articles of partnership or association and all other organization papers if the operator is organized under another form. In the event the operator is not the legal title holder to the property upon which the facility is or is to be constructed, the above documents shall be submitted for both the provider and the legal title holder;
- (c) An organizational chart describing the relationship between the applicant and its affiliates, indicating the state of domicile of the entity and the primary business of each;
- (d) A statement concerning any litigation, orders, judgments or decrees which might affect the facility;
- (e) A statement concerning any adjudication of bankruptcy during the last five years against the operator, its predecessor, parent or subsidiary company and any principal owning more than five percent of the interests in the facility at the time of the filing of the application for preliminary license. This requirement shall not extend to limited partners or those whose interests are solely those of investors;
- (f) A representative sample of advertisements and promotional materials for the facility;
- (g) A copy of a continuing care agreement and any binding reservation agreement proposed to be used by the operator in the furnishing of continuing care or in taking reservations for continuing care; such agreements must meet the minimum requirements of Section 37-11-35 and this regulation;
- (h) A copy of an agreement with providers for the provision of nursing care, health care, or other health-related services. If no agreement is executed at the time of the application for a preliminary license, these agreements may be submitted with the application for a final license;
- (i) A copy of an entrance fee escrow agreement proposed to be used by the operator;
- (j) If the operator collects or intends to collect binding deposits at the time of signing of a continuing care agreement or a continuing care reservation agreement, a copy of such deposit and/or reservation agreement and a copy of an escrow agreement for such deposits;
- (k) A description of the proposed complaint system to resolve complaints by prospective residents who have deposited funds with the operator;
- (l) A copy of a current or proposed disclosure statement conforming to the requirements of Section 37-11-60 and of this regulation and including a detailed description with terms concerning whether the facility will offer terms for payment of entrance fees and/or deposits;
- (m) A list of all necessary permits, licenses and certifications received or applied for and their status at the time the application is submitted to the department;

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(n) Such other reasonable data as the department may require with respect to the provider or the facility.

(6) The department shall issue a preliminary license if it determines that:

(a) The feasibility study or its substitute has been approved;

(b) The continuing care contracts to be used between the operator and the subscriber meet the requirements prescribed by Section 37-11-10 et. seq. and by this regulation;

(c) The operator's disclosure statement conforms to the requirements prescribed by Section 37-11-60 and by this regulation;

(d) The facility's advertising and promotional materials are not deceptive, misleading or likely to mislead;

(e) The facility has in effect its complaint system as described more fully in R. 28-600W;

(f) The applicant has demonstrated the willingness and potential ability to assure that the health care or health-related services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner assuring availability, accessibility, and continuity of service;

(g) The entrance fee escrow agreement and any binding reservation agreement state that, if required by Section 37-11-90, all deposits will be held in escrow until the issuance of a final license and thereafter released in accordance with Section 37-11-90 and this regulation.

(7) An operator who elects not to collect binding reservation deposits from prospective residents may apply for a final license pursuant to R. 28-600D(4).

(8) The application for a preliminary license shall be accompanied by a license fee of One Thousand Five Hundred Dollars, subject to change.

(9) The department shall decide whether to grant a preliminary license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a preliminary license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

D. Final license.

(1) An operator may not enter into continuing care contracts nor provide continuing care, except for good cause shown, until the issuance of a final license by the department. The application for a final license shall be on a form prescribed by the department. The application shall be accompanied by a license fee of Five Hundred Dollars, subject to change.

(2) The application for a final license shall contain at least the following information:

(a) Any material change with respect to the information required to be filed in the application for a preliminary license;

(b) An affidavit by the person who prepared the original feasibility study that there has been no material adverse change in status with regard to the feasibility study, such statement generally dated not more than twelve months from the date of filing the application for a final license. Should a material adverse change exist at the time of the submission, then sufficient information acceptable to the department and the feasibility consultant shall be submitted together with the proposed remedy;

(c) If instead of a feasibility study a substitute was submitted with an application for a preliminary license, then the feasibility study and the opinion letter shall be submitted with an application for a final license. However, operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application;

(d) Proof that the applicant has received written commitments for construction financing and for permanent long-term financing when the construction has been completed;

(e) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) an accountant's opinion; and

(ii) notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial conditions and operations;

(f) If the operator's fiscal year ended more than one hundred twenty days before the date the license application is filed, interim financial statements as of a date not more than ninety days before the date of filing of the application must be included but need not be certified;

(g) A statement of financial responsibility as required in R. 28-600Q;

(h) A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the operator, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;

(i) A projected annual budget for the facility for one year unless required otherwise by the department in case the facility might experience financial problems;

(j) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(k) Any resident's guide, policy manual or other material of similar application, whether current or proposed;

(l) A copy of an agreement with the providers for the provision of nursing care, health care, or other health-related services;

(m) A list of all necessary permits, licenses and certificates received or applied for, and their status at the time the application is submitted to the department;

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- (n) A copy of the procedure for handling and reviewing residents' complaints;
 - (o) A representative sample of advertisements and promotional materials for the facility;
 - (p) Any other information required to be submitted under Section 37-11-30(B) as may be outlined in the application form for a final license;
 - (q) Such other reasonable data as the department may require with respect to the operator or the facility.
- (3) The department shall issue a final license, with appropriate conditions, if it determines that each of the following have been satisfied:
- (a) The applicant has a preliminary license issued by the department;
 - (b) The documents required have been filed with the department;
 - (c) The advertising materials filed are not deceptive, misleading, or likely to mislead;
 - (d) The continuing care retirement community is financially responsible and can meet its obligations to residents:
 - (i) In determination of financial responsibility of an applicant for a final license, the department shall consider the requirements set forth in Section 37-11-40(1) through (4) and the facility's statement of financial responsibility as required in R. 28-600Q;
 - (ii) Financial adequacy required to guarantee performance of contractual obligations will be determined from a review of audited financial statements to insure that the assets are adequate to meet contractual obligations to residents and from actuarial reports, if required under Section 37-11-30(B)(10);
 - (e) The operator has complied with all requirements of the Department of Health and Environmental Control in obtaining a Certificate of Need and has applied for licenses to operate nursing, medical, or other health-related services;
 - (f) The operator has all necessary permits and licenses or applications for the same. If applications are provided, the effectiveness of any final license is conditioned upon the receipt of all necessary permits and licenses;
 - (g) The proposed complaint system satisfies the requirements of Section 37-11-60 and of this regulation;
 - (h) The operator is in compliance with the entrance fee escrow requirements of Section 37-11-90.
- (4) An operator who elects not to collect binding reservation deposits from prospective residents but who instead, prior to securing binding financial commitments, intends to offer for signature by prospective residents continuing care contracts with certain percentage of the entrance fee to be paid upon signature, is not required to apply for a preliminary license under R. 28-600C. Such operator may instead apply only for a final license pursuant to this Section. To the extent applicable, such application shall contain information required by R. 28-600C and D and shall be accompanied by a licensing fee of Two Thousand Dollars, subject to change. Under no circumstances may continuing care contracts be entered into or advertising as a continuing care retirement community occur prior to obtaining a final license from the department.

(5) The department shall decide whether to grant a final license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a final license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

E. Renewal licenses.

(1) Holders of final licenses shall apply at least sixty days prior to the expiration of their current licenses for a renewal license. Any subsequent annual applications for a renewal license shall likewise be submitted at least sixty days prior to the expiration of a current license.

(2) The application for a renewal license shall be on a form prescribed by the department and accompanied by a license fee of Two Thousand Dollars, subject to change.

(3) Unless the same information was previously submitted to the department, the application for a renewal license shall contain:

(a) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) An accountant's opinion; and

(ii) Notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation;

(b) If the fiscal year ended more than one hundred twenty days before the date of filing, a financial statement which need not be certified concerning the period between the date the fiscal year ended and a date not more than ninety days before the date the application is filed;

(c) A statement of financial responsibility as required in R. 28-600Q;

(d) A projected annual budget for the facility;

(e) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(f) A copy of all written complaints handled through the complaint system and a statement of the average time to resolve the complaint;

(g) A description of any material change with respect to any information provided with the previous application;

(h) A representative sample of advertisements and promotional materials for the facility;

(i) Such other reasonable data as the department may require with respect to the operator or the facility.

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(4) The department shall decide whether to grant a renewal license within sixty days of the submission of the application provided that for good cause shown and subject to Section J, a reasonable extension of time may be granted concerning the application. If a renewal license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

F. Continuous updates.

Regardless of the information filed with the annual license renewal application, each operator shall immediately notify the department of and file pertinent documents regarding:

- (1) Any investigation, litigation, orders, judgments, or decrees which affect the facility, operator and/or owner, including, but not limited to, a bankruptcy, foreclosure, or receivership proceeding;
- (2) Any proceeding for denial, suspension or revocation of any license or permit needed to operate the facility;
- (3) Any proposed changes in the continuing care contract;
- (4) Any updates to the disclosure statement in which information required by R. 28-600M is changed;
- (5) Any proposed expansion or closure of the facility, including, but not limited to, the closing of a wing or building of the facility where the residents are being relocated;
- (6) Any proposed transfer of ownership of the facility;
- (7) Any proposed change in the control of the operator;
- (8) Any change of the administrator of the facility;
- (9) Any change with respect to the information required by the sections as in D and E above;
- (10) Any change in the facility's contract(s) with the provider of medical or other health-related services.

G. All license applications; form.

Applications for all licenses shall be submitted in the following form:

- (1) One complete set of the information and documents required to be filed shall be submitted in a separate binder, fastened in such a manner as to permit the reading of each page without requiring removal. The disclosure statement and financial statement shall be submitted in separate binders.
- (2) All information and documents shall be arranged in the order set forth by the department in the application forms. The department will make such applications form available upon request to any potential applicant.
- (3) Each binder shall note the name and address of the operator and the name, address and phone number of the person responsible for the preparation of the application on the front cover.
- (4) The first page shall be a table of contents.

(5) The right of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab.

(6) If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission.

(7) With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8 ½ inches by 11 inches nor larger than 8 ½ inches by 14 inches.

(8) Plats, maps, or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

H. All licenses; validity and form.

(1) All licenses issued under the Act and this regulation expire one year after the date of issuance or such additional time as the department may allow during the review of the subsequent application. Licenses may be issued only for the premises and persons named in the application and are not transferrable or assignable.

(2) All licenses issued by the department shall be on a form issued by the department and shall be posted in a conspicuous place at the business location. If the facility has not begun operations, the license shall be posted where contracts are entered into or monies are received by the business.

(3) All licenses issued by the department pursuant to this regulation shall contain, in a prominent location, a statement that the issuance of a license does not constitute approval, recommendation, or endorsement of the facility by the department nor does such a license evidence the accuracy or completeness of the information set forth in the applications for such license.

I. Several facilities.

(1) If the operator provides or intends to provide continuing care at more than one facility, the operator must obtain an appropriate separate license for each such facility. Funds collected by one facility should not be expended for the benefit of any other facility. Where there are multi-facility operations, entrance fees collected for service at a particular facility shall be managed appropriately to safeguard the financial interest of the resident who paid the fee for facilities and services at a particular community, provided no cross-collateralization is permissible and evidence of any shall be grounds for license revocation, penalty or other action deemed appropriate by the department.

(2) An entity which as of July 1, 1991, has operated in this State several facilities on different locations under one corporate structure where all monies from and disbursements to such locations have been channeled through the corporate headquarters and where only one central system of accounting has been maintained for all the locations is exempt from the provision of subsection (1) above. Such entity may in its license application submit only one financial statement on behalf of all locations it operates, pay a license fee of Two Thousand Dollars on behalf of the corporate entity and a processing fee of Five Hundred Dollars on behalf of each location it operates, subject to change. Disbursements to individual locations will not be deemed cross-collateralization, provided, however, that continuance of such practice will not adversely affect financial soundness of any location operated by the corporation. To that effect, the department reserves the right to invoke, upon investigation and hearing, the cross-collateralization penalties of subsection (1) above.

J. Incomplete applications and notice of corrections.

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(1) When the department determines, upon inquiry and examination, that any application for license is not complete or in any other way does not meet the requirements of Section 37-11-10 et. seq. and of this regulation, the department shall issue to the applicant in writing a notice of corrections that will clearly notify the applicant that the application for license must be corrected in such particulars within thirty days of receipt of the notice.

(2) The issuance of a notice of corrections shall toll the sixty day review period of the application by the department until the deficiencies listed in the notice of corrections are cured by the applicant.

(3) In the event the requirements of the notice of corrections are not met within the thirty day period or in such additional time as the department may grant for good cause shown, the department may reject the application for a license and include findings of facts.

(4) Upon rejection, an applicant may request a hearing, or alternatively, may reapply after making appropriate corrections.

K. Advertising; general standards.

All advertising which is used by or on behalf of the operator to promote a continuing care retirement community shall be accurate, truthful and not misleading so as to fully inform the public and foster their understanding and trust. In preparing any advertising material, the operator is subject to state unfair and deceptive trade practices laws.

L. Continuing care contracts.

(1) Continuing care contracts must be printed in one hundred percent black ink with the exception of the operator's name and business logo. The contracts must be printed on stock that is at least 11 inches high and 7¼ inches wide. All print in continuing care contracts shall be in print no smaller than ten point type.

(2) Continuing care contracts shall be written in language customarily used and understood by people in the conduct of their personal affairs.

(3) A continuing care contract shall contain a full description of services offered by the continuing care community. Such description shall include, to the extent known, a description of the conditions under which such services may be rendered, including the services that may in the future be rendered pursuant to a different contract with the operator.

(4) The continuing care contract must contain a right to cancel provision in the following language which must be bold face type:

RESIDENT'S RIGHT TO CANCEL

You may cancel this contract by sending notice of your wish to cancel to the continuing care community (community) before midnight of the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following: (Insert business name and address). If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

(5) The continuing care contract must contain a statement in bold face type of what portion, if any, of the entrance fee is refundable or non-refundable.

(6) The continuing care contract must contain in capital letters in bold face type no smaller than the largest type used in the contract the following statement:

A license issued by the South Carolina Department of Consumer Affairs is not an endorsement or guarantee of this facility by the State of South Carolina. The South Carolina Department of Consumer Affairs urges you to consult with an attorney and a suitable financial advisor before signing any documents.

(7) No act, agreement or statement of a resident or an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act and this regulation intended for the benefit or protection of the resident or the individual purchasing care for the resident.

M. Disclosure statement.

(1) At the time of, or before, the execution of a contract to provide continuing care, or the transfer of money or other property to an operator by or on behalf of a prospective resident, whichever occurs first, the operator must deliver a current disclosure statement to the person with whom the contract is to be entered into containing at least the following information:

(a) The name and the business address of the operator and a statement of whether the operator is a partnership, corporation, or other type of legal entity;

(b) The name and position title of the individual to whom inquiries should be directed regarding facilities, services, or other information;

(c) A statement that the facility will make available upon request the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, and any person who will be managing the community on a day-to-day basis, together with a description of a business experience, if any, of these persons in the operation or management of similar facilities and, if applicable, a description of any matter in which these persons:

(i) have been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) are subject to a currently effective injunctive or restrictive court order or within the past five years, had a state or federal license suspended or revoked as a result of an action brought by a governmental agency or department;

(d) A statement as to the operator's affiliation with a religious, charitable or other non-profit organization, the extent of the affiliation, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the operator, and the provisions of the Federal Internal Revenue Code, if any, under which the operator or affiliate is exempt from the payment of income tax;

(e) The location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, the date construction began or shall begin, and the contingencies subject to which construction may be deferred;

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(f) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished; a clear statement of which services are included for monthly basic fees for continuing care and which services are made available at or by the facility at extra charge;

(g) If the facility is already in operation, a statement as to which services may be available subject to a waiting list or priority rights of other residents, as well as the best estimate of the average waiting period for such services. This statement shall cover both the services described in the continuing care contract and in any other materials used to advertise and promote the facility regardless of whether such services are provided under the continuing care contract or under another agreement to be executed in the future;

(h) A description of all fees required of residents, including the entrance fee, monthly basic fee and other periodic charges, if any. The description must include:

(i) a statement of the fees charged if the resident remarries while at the facility and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirement for entry;

(ii) the circumstances under which the resident is permitted to stay in the facility if the resident has financial difficulties;

(iii) the terms and the conditions under which a contract for continuing care at the facility may be canceled by the operator or by the resident, and the conditions, if any, under which all or a portion of the entrance fee is refunded if the contract is canceled by the operator or by the resident or if the resident dies before or following occupancy of a living unit;

(iv) the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident;

(v) the manner by which the operator may adjust monthly basic fees or other periodic charges, and the limitations on these adjustments, if any. If the facility is already in operation, tables must be included showing the frequency and average dollar amount of each increase in monthly basic fees or other periodic charges at the facility or location for the previous two years, or for all the years in operation if less than two years;

(i) The health and financial condition required for a person to be accepted as a resident, and to continue as a resident once accepted, including the effect of a change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person;

(j) The current and estimated number of the residents of the facility to be provided services by the operator pursuant to the contract for continuing care;

(k) A description of the procedures for receiving and resolving written complaints by the residents;

(l) The following statement: The operator is required to furnish an item-by-item billing for all charges to the resident or the person paying the bill upon his or her request unless the items and charges are included in the continuing care contract. Items which remain unpaid are not required to be itemized again. A request for itemized billing remains in effect until further notification by resident or person paying the bill;

(m) A statement as to whether or not the facility, or any component thereof, accepts Medicare and/or Medicaid. In case the facility does not accept Medicare and/or Medicaid, the following statement will be inserted in bold face type in the disclosure statement:

This facility does not accept Medicare and/or Medicaid. In case a resident exhausts his available financial resources prior to or following admission into our nursing home or assisted living accommodations, the resident might have no choice but to apply for admission to a facility that accepts these payments.

In case the facility has a discretionary fund to assist residents who deplete their financial resources, the following language will also be inserted in bold face type in the disclosure statement:

The discretionary funds available to the management may be used to supplement the entire cost of care or a part of it. However, the application of these funds is entirely within the discretion of the management and the presence of these funds is no guarantee for a continuing stay in this facility following the depletion of your own financial resources.

(2) The disclosure statement shall conspicuously state that in addition to the information contained in the disclosure statement, a prospective or current resident or prospective or current resident's legal representative with a general power of attorney has a right to ask for and receive the information regarding reserve funding of the facility, if any, experience of persons who will make investment decisions, certified financial statements of the operator including balance sheets and income statements, a current actuarial study, if available, a feasibility study for a facility that has not begun operations, and information regarding persons having a five percent or greater interest in the facility within the scope of Section 37-11-30(B)(2).

(3) To the extent applicable, the information required to be provided under this section will be provided in the same form as the identical information required to be submitted with the operator's application for a license under Section 37-11-30(B).

(4) Material changes in the information contained in the disclosure statement shall be updated in the form of addenda on a periodic basis. Each addendum shall be clearly and conspicuously marked as such and shall be immediately filed with the department upon license renewal. Each operator shall from time to time revise the disclosure statement so as to incorporate all existing addenda.

N. Expansions of existing facilities.

(1) An existing operator which intends to expand a continuing care retirement community by more than twelve units or twenty-five percent of individual living units, whichever is more, shall file with the department a letter of intent disclosing the plan of the expansion. The letter shall disclose the following:

- (a) The purpose and the scope of the expansion;
- (b) Estimated capital cost;
- (c) Ability to finance;
- (d) Financial impact on current residents;
- (e) Impact on current community structure to provide resident services;
- (f) Present occupancy rate and marketability of the expansion;

(g) If the facility has had a feasibility study made, then its operator shall submit, in addition to the letter of intent, a supplement to that feasibility study. If the facility did not have a feasibility study made in the past, then the operator shall submit, in addition to the letter of intent, a substitute study.

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(2) In order to prevent avoidance of subsection (1) above, the exemption may not exceed a twenty-five percent increase in individual living units cumulative over a two year period.

O. Transfer of ownership of a facility.

(1) An operator intending to undertake a transfer of ownership of a facility shall notify the department at least thirty days in advance of the proposed settlement date.

(2) A notice of intention of transfer of ownership of a facility may be in the form of a letter, addressed to the department, and shall contain the following information:

- (a) Name and address of the licensed operator from whom ownership will be transferred;
- (b) Name and address of the person intending to acquire the ownership interest;
- (c) Name and address of the facility whose ownership is being transferred;
- (d) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a license from the department.

(4) When a person to whom ownership is being transferred files an application for a license, in addition to the selected information as will be specified on a form available from the department, the person shall file a statement containing the following information:

- (a) The terms and conditions of the transfer of ownership;
- (b) The source of funds to be used to finance transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions;
- (c) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A license will not be issued under this Section unless the transferee has agreed in writing to assume the contractual obligations imposed on the current operator by its existing continuing care agreements. Any person aggrieved by the determination of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

P. Entrance fees and binding reservation deposits; escrow provisions.

(1) If an entrance fee is received by the operator before the date the resident is permitted to occupy a living unit in the facility, the total amount must be placed in an escrow account with a trust institution. These funds may be released only as follows:

(a) If the entrance fee applies to a living unit that previously has been occupied in the facility, the entrance fee must be released to the operator when the living unit becomes available for occupancy by the new resident.

(b) If the entrance fee applies to a living unit which previously has not been occupied by a resident, the non-refundable portion, if any, of the entrance fee must be released to the operator when the living unit

becomes available for occupancy. The refundable portion, if any, of the entrance fee must be released to the operator when the escrow agent is satisfied that:

(i) construction or purchase of the living unit has been completed, and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue the permit;

(ii) a commitment has been received by the operator for a permanent mortgage loan or other long-term financing, and conditions of the commitment before disbursement of funds have been satisfied substantially;

(iii) aggregate entrance fees received or receivable by the operator pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the financial feasibility study required by Section 37-11-30 to be necessary to fund cash shortages during start-up and assure full performance of the obligations of the operator pursuant to continuing care retirement community contracts.

(2) If the operator enters into binding reservation agreements pursuant to which deposits are collected from prospective residents, such deposits shall be deposited in an escrow account with a trust institution as defined in Section 37-11-20(10). Such deposits will be released to the operator under the conditions stated in Section 37-11-90(B) and R. 28-600P of this regulation.

(3) An escrow agreement entered into between a trust institution and an operator shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of the Act and this regulation, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator or resident as directed. At the time of entering into an escrow agreement, an operator shall inform an escrow agent of the Act and this regulation and the respective requirements of each.

(4) All funds deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the operator or facility.

(5) When funds are received from a resident or prospective resident, the operator shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the continuing care contract, and the amount of money paid.

(6) In applying the provision of Section 37-11-90(C) relating to the reasonable time in which the operator must meet the requirements for release of funds held in the escrow account, escrow agents shall not consider such reasonable time to exceed thirty months from the date the entrance fee or any portion thereof was first deposited in the escrow account, unless the extension is requested from and granted by the department for good cause shown.

(7) A continuing care retirement community is exempt from the provisions of this Section if:

(a) it has been operating for at least five years; and

(b) for the previous six months it has maintained at least the minimum occupancy rate estimated in its financial feasibility study to achieve a break-even cash flow operating level or seventy-five percent occupancy, whichever is less.

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Q. Financial responsibility requirements.

The applicant shall provide a detailed written statement regarding the specific provisions taken, or to be taken, to enable the applicant to perform its obligations fully under contracts to provide continuing care. Such provisions may include surety bonds; financial reserves; letters of credit; adequacy of working capital and actual and projected occupancy rates; and other financial arrangements or assurances, as permitted in Section 37-11-40.

R. Dismissal or discharge of resident; refund.

(1) No continuing care contract which requires payment of an entrance fee or other fee in return for a promise of future care or which provides for services for the life of the person or for more than one year (including mutually terminable contracts) shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement without just cause for such removal. The term "just cause" includes, but is not limited to, a good faith determination in writing, signed by the medical director and/or the administrator of the facility, that a resident is danger to himself or others while remaining in the facility. The written determination shall state:

- (a) That the determination is made in good faith;
- (b) The reasons supporting the determination that the resident is a danger to himself/herself or others;
- (c) The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident.

(2) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, to the extent the continuing care contract between the parties so provides.

S. Examination of affairs of continuing care retirement communities and health care providers.

(1) The department may at any time examine the business of any applicant for a license and any operator engaged in the execution of continuing care contracts or in the performance of obligations under such agreements. Routine examinations may be made by having the necessary documents submitted to the department; and, for that purpose, financial documents and records conforming to commonly accepted accounting principles and practices will be deemed adequate. The final written report of each such examination shall be filed with the Administrator. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative of the department may at any time examine the records and affairs and inspect the physical property of any operator and the health care and health-related services provider with whom the operator has contracts, agreements, or other arrangements, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect and copy any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of the Act and this regulation.

(3) Reports of the results of such examinations shall be kept on file by the Administrator. Any records, reports, or documents obtained by the department which by state or federal law or regulation are deemed confidential may not be distributed to the public by the department unless required under appropriate court order or until such confidential status has expired.

(4) The department shall notify the operator in writing of all deficiencies in its compliance with the provisions of the Act and this regulation and shall set a reasonable length of time for compliance by the facility. In addition, the department shall require corrective action or request a corrective action plan. If the operator fails to comply in a time established by the department, a fine not to exceed Fifty Dollars per day shall be paid. The department may also initiate action against the operator in accordance with the provisions of Section 37-11-110 and R. 28-600Z.

T. Grounds for discretionary denial, suspension, or revocation of a license.

The department, in its discretion, may deny, suspend, revoke, or refuse to renew or continue the license of any applicant or operator if it finds that any one or more of the following grounds applicable to the operator exist:

- (1) Failure by the operator to continue to meet the requirements for the license originally granted, on account of deficiency of assets;
- (2) Lack of one or more of the qualifications for the license as specified by this chapter;
- (3) Material misstatement, misrepresentation, or fraud in attempting to obtain or obtaining the license;
- (4) Demonstrated lack of fitness or trustworthiness;
- (5) Fraudulent or dishonest practices of management in the conduct of business under the license;
- (6) Misappropriation, conversion, or withholding of money;
- (7) Substantial failure to comply with, or violation of, any provision of the Act and this regulation or any properly issued order of the Administrator;
- (8) Refusal by the operator to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the department;
- (9) Failure by the operator to comply with the requirements of Section 37-11-90 and R. 28-600S;
- (10) Failure by the operator to maintain escrow accounts or funds that may be required by the Act and this regulation;
- (11) Failure by the operator to honor its continuing care contracts with residents.

U. Duration of suspension; obligations during suspension period; reinstatement.

(1) Suspension of a license shall be for such period, not to exceed one year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order of suspension is modified, rescinded, or reversed.

(2) During the period of suspension, the operator shall file its renewal application if and when due. The department in its order of suspension may order that the operator issue no new contracts. If and when the renewal license is granted, the operator shall then pay its annual license fee required for that year.

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(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the operator's license shall automatically be reinstated unless the department finds that the causes for the suspension have not been removed or that the operator is otherwise not in compliance with the requirements of the Act and this regulation. If not automatically reinstated, the license shall be deemed to have expired as of the end of the suspension period or upon failure of the operator to continue the license during the suspension period, whichever event first occurs.

V. Administrative fines.

(1) If the department finds that one or more grounds exist for revocation or suspension of a license, the department, in lieu of such revocation or suspension, may impose a fine upon the operator in an amount not to exceed Ten Thousand Dollars per violation.

(2) If it is found that the operator has knowingly and willfully violated a lawful order of the department or a provision of the Act and this regulation, the department may impose a fine not to exceed Ten Thousand Dollars for each such violation.

(3) Failure of holders of final licenses to apply at least sixty days prior to the expiration of their current licenses for a renewal license shall result in a fine being imposed by the department.

W. Complaint system to be established.

(1) Each facility's complaint system shall, at a minimum, provide residents with the following:

- (a) The name of the staff person or persons authorized to receive written complaints from residents;
- (b) An opportunity to discuss the substance of the complaint with the designated staff person;
- (c) The time period in which the operator shall make a written response to the complaint;
- (d) A statement that the operator shall not engage in any retaliatory action against the complainant.

(2) Copies of the complaint system shall be distributed to residents and conspicuously posted at a common area of the facility.

X. Department's response to written complaints.

(1) Upon receipt of a written complaint, the department shall make a preliminary review; and unless the department determines that the complaint is without any reasonable basis, the department shall take appropriate action.

(2) No licensed operator may discriminate or retaliate in any manner against a resident of a facility providing care because such resident has initiated a written complaint pursuant to this Section.

Y. Financial review committee.

At such time as the Administrator determines that a facility cannot fully perform its obligations under continuing care contracts, the Administrator may appoint a financial review committee. Such committee may include persons knowledgeable in the field of continuing care, certified public accountants, members of the financial community, and others as may be deemed appropriate by the Administrator. The members of the committee shall advise the Administrator regarding the merits of the facility's corrective plan proposal.

Z. Administrative Procedures Act; applicability.

The South Carolina Administrative Procedures Act and the department's regulations promulgated thereunder shall apply in all the proceedings involving the determination of any issue pursuant to Section 37-11-10 et seq. and thereunder. Any person who is aggrieved by a decision of the department shall be entitled to a contested case hearing before the Administrative Law Court provided the hearing is requested in writing no later than thirty days from the issuance of such decision pursuant S.C. Code Ann. Section 1-23-310 and Rule 11 of the Rules of Procedure for the Administrative Law Court.

AA. Severability.

If any provision of this regulation or the application thereof to any person, facility or circumstances is held to be invalid, the invalidity shall not affect other provisions or application of this regulation, and to this end the provisions of this regulation are severable.

Fiscal Impact Statement:

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

Statement of Rationale:

The purpose of the revisions to 23A S.C. Code Ann. R. 28-600 is to provide greater detail of existing procedures, delete obsolete provisions, otherwise harmonize the Regulation with Title 37 Chapter 11 of the South Carolina Code, and clarify that contested case hearings shall be filed with the Administrative Law Court. There was no scientific or technical basis relied upon in the development of this regulation. Other formatting changes and minor edits have been made for consistency purposes.

Document No. 3209
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-67-20, 59-67-410 and 59-67-570

43-80 N. and T. Operation of Public Pupil Transportation Services

Synopsis:

The South Carolina Department of Education (SCDE) proposes to amend R 43-80 N. and T., Operation of Public Pupil Transportation Services, to establish the school bus driver certification program mandated by S. C. Code Ann. § 59-67-108 and to reflect recent changes to the Commercial Driver's License for school bus drivers offered by the Department of Motor Vehicles. These changes require new regulatory language to establish a multi-category School Bus Driver's Certification program and an updated reference to the School Bus Commercial Driver's License.

Section-by-Section Discussion

(1) To implement the mandated school bus driver certification program established by S. C. Code Ann. § 59-67-108.

43-80 N.—This section has been amended and restructured to create a school bus driver's certification program that establishes unique school bus driver training and certification requirements based on the type of school bus being operated. The amendment establishes school bus driver certification requirements for school

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bus drivers transporting or intending to transport preprimary, primary, or secondary students to and from school, and school related activities, or children to and from childcare or related activities.

(2) To align existing regulatory language with changes instituted by the South Carolina Department of Motor Vehicles.

43-80 N.—This section has been amended to reflected changes made to the school bus commercial driver's license.

43-80 T.2.—This section has been amended to acknowledge that portions of existing language in Part T has been moved to Part N, and clarifies the operator requirements for the state-owned school boat.

43-80 T.—This section has been amended to create a driver certification program that establishes training and testing to assure that drivers can safely operate a school bus.

Instructions: Items N. and T.2. amended; Items A. through M. remain the same, Items O. through T.1. remain the same, and Items T.3. through EE. remain the same.

Text:

43-80 N. and T. Operation of Public Pupil Transportation Services

N. The school bus driver certification program is established by the South Carolina Board of Education (SCBE) and administered by the South Carolina Department of Education (SCDE) to qualify individuals to drive one or more of the numerous types of school buses. A school bus is a vehicle as defined in Sections 59-67-10 and 56-5-195 of the South Carolina Code. The school bus definition designates a Full-functional School Bus (FFSB) vehicle as a school bus vehicle that is equipped with all signage and lamps to meet the requirements of Section 56-5-2770 and meets the National School Bus chrome yellow color requirements in Section 59-67-30, thus allowing it to control traffic when loading and unloading students. The school bus definition also designates the Multi-functional School Activity Bus (MFSAB) vehicle as school bus vehicle that cannot control traffic because it lacks either signage or lamp requirements of Section 56-5-2770 or does not meet the National School Bus chrome yellow color requirements in Section 59-67-30. The vehicle's manufacturer passenger capacity rating has no effect on the vehicle's status as a school bus.

An individual driving a school bus, as defined in this regulation, must have a valid SCDE school bus driver's certificate in his or her possession when transporting or intending to transport preprimary, primary, or secondary students to or from school, and school related activities, or children to and from childcare or related activities.

The SBE directs the SCDE to establish a school bus driver certification program that provides for the following three (3) separate and distinct school bus driver's certificate categories.

Certificate A—Authorizes an individual to operate any school bus owned or leased by the State, a local school agency, a private contractor, a private school, or a childcare facility for the purpose of transporting school students.

Certificate B—Authorizes an individual to only operate an MFSAB owned or leased by a local school agency, a private contractor, a private school, or a childcare facility for the purpose of transporting school students.

Certificate C—Authorizes an individual to operate a school bus owned or leased by a private school or a childcare facility when the school bus is an FFSB. Additionally, the individual is authorized to operate an MFSAB owned or leased by a local school agency, a private contractor, a private school, or a childcare facility for the purpose of transporting school students.

Certificate categories B and C are divided into two sub classifications: commercial vehicles and non-commercial vehicles. The non-commercial classification is established to certify individuals to only operate a school bus that is not classified as a Commercial Motor Vehicle by the South Carolina Department of Motor Vehicles (SCDMV).

In order to obtain any one of the SCDE School Bus Driver's Certificates, either an A, B, or C, an individual seeking certification or renewal must successfully complete all requirements established by this regulation and the related tests of the SCDE and SCDMV. Certificates are only issued by the SCDE.

The SCDE School Bus Driver Certification Program includes requirements that are common to all three (3) certificate categories plus requirements that are unique to a driver certificate category.

The common requirements that all drivers must satisfy for issuance and renewal of an SCDE School Bus Driver's Certificate are as follows.

1. Driver candidates must not have or have had in the past twelve (12) months more than four (4) points against his/her driver license or driving Motor Vehicle Record (MVR).

2. Driver candidates shall successfully complete the SCDE School Bus Driver's Classroom Training Program.

3. Driver candidates shall have a physical examination administered by a qualified medical examiner; the driver must pass the examination every two years, or more frequently if directed by the medical examiner. The physical examination shall be administered using an "SCDE Medical Examination Report for Commercial Driver Fitness Determination" form provided by the South Carolina Department of Education or the United States Department of Transportation "Medical Examination Report" form. The driver candidate must provide the certificate testing administrator his or her qualifying Medical Examination Report prior to taking the school bus driver physical performance test and the commercial driver's license skills test. The school bus driver candidate must provide a copy of the qualifying Medical Examination Report to his or her employer. An employer may require additional physical examinations as the employer determines to be appropriate. The State assumes no responsibility for the cost incurred by the employer or driver for the physical examinations required by this regulation.

4. Driver candidates shall successfully pass the SCDE School Bus Driver Physical Performance Tests.

5. Driver candidates shall successfully complete a minimum of 10 hours of SCDE Behind-the-Wheel Road Skills Training, for initial issuance only.

6. Driver candidates shall pass the SCDE Behind-the-Wheel Road Skills Examination.

7. Drivers must show proof that they are covered by and will continue to be covered by a substance abuse program. The program must comply with state and Federal laws requiring drivers to participate in a drug and alcohol testing program encompassing at a minimum: (1) a substance abuse policy; (2) a substance abuse education program; (3) substance abuse testing (including pre-employment, reasonable suspension, post-accident, and random selection testing); and (4) a substance abuse referral assistance program. The substance abuse testing program shall comply with the U. S. Department of Transportation Regulation, Title 49, Chapter III, Section 382 et al., and Federal Highway Administration for testing drivers of commercial vehicles.

8. The driver candidate must satisfy the above common requirement items 3 through 7 within one hundred and eighty (180) days after successfully completing item 2.

In addition to the above eight common requirements, certificate categories have unique requirements that a driver must satisfy before issuance and/or renewal of the SCDE School Bus Driver's Certificate.

1. Certificate-A requires the following.

- a. The driver candidate must possess a valid Commercial Driver's License with the appropriate endorsements required by State and Federal law necessary to operate a school bus commercial motor vehicle.

- b. The driver must complete a minimum of ten (10) hours of SCDE approved in-service training annually to qualify for renewal.

2. Certificate-B Commercial requires the following.

- a. A driver candidate must possess a valid Commercial Driver's License with the appropriate endorsements required by State and Federal law to operate a school bus type vehicle to qualify for issuance.

- b. A driver must complete a minimum of two (2) hours of SCDE approved in-service training annually to qualify for renewal.

3. Certificate-B Non-Commercial requires the following.

- a. A driver candidate must possess a valid Driver's License that meets the requirements in State and Federal law to operate a non-commercial school bus type vehicle with no restrictions other than vision correction to qualify for issuance.

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b. A driver must complete a minimum of two (2) hours of SCDE approved in-service training annually to qualify for renewal.

4. Certificate-C Commercial requires the following.

a. A driver candidate must possess a valid Commercial Driver's License with the appropriate endorsements required by State and Federal law to operate a school bus type vehicle to qualify for issuance.

b. A driver must complete a minimum ten (10) hours of SCDE approved in-service training annually to qualify for renewal.

5. Certificate C Non-Commercial requires the following.

a. A driver candidate must possess a valid Driver's License that meets the requirements in State and Federal law to operate a non-commercial school bus type vehicle with no restrictions other than vision correction to qualify for issuance.

b. A driver must complete ten (10) hours of SCDE approved in-service training annually to qualify for renewal.

Drivers accumulating more than four (4) points after being issued an SCDE School Bus Driver's Certificate shall have the certificate suspended. If a certificated driver receives a ticket for Driving Under the Influence (DUI), the certificate shall be suspended, and if convicted of DUI, the driver's SCDE Certificate shall be revoked. The employer of the driver shall notify the SCDE within thirty (30) days of such excessive driver license points and DUI actions.

Driver candidates are subject to a South Carolina criminal background check that must be conducted by their employer before transporting students. The employer may require additional federal level security and criminal background checks.

The SCDE shall establish procedures to transition the existing SCDE single category school bus driver certification program to the new multi-category School Bus Driver's Certificate program. All drivers that have a valid SCDE school bus driver certificate, and are in good standing with SCDE in-service training requirements, will be converted to a School Bus Driver's Certification A. All drivers that have a valid SCDE school bus driver certificate, but have not completed the SCDE in-service training requirements, will be considered for conversion to a School Bus Driver's Certification B.

Drivers must be in compliance with these requirements on or before August 15, 2008.

T. Special Transportation Service

2. The school boat must be operated by an individual with the required U.S. Coast Guard Merchant Marine Officer, Master of Steam and Motor Vessels license.

Fiscal Impact Statement:

There will be minimal increased costs to the State or its political subdivisions.

Statement of Rationale:

Regulation 43-80 N. and T. is amended to comply with the school bus driver certification program mandated by S. C. Code Ann. § 59-67-108 and to reflect recent changes to the Commercial Driver's License for school bus drivers offered by the Department of Motor Vehicles.

Document No. 3196
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Section 59-114-75

62-250 to 62-263. South Carolina National Guard College Assistance Program

Synopsis:

In accordance with Act 40 of 2007 that amends Chapter 114, Title 59, Code of Laws of South Carolina, 1976, CHE proposes to add R.62-250 through R.62-263 to provide for the college assistance program for National Guard members that is to be administered by the Commission on Higher Education. The regulations provide eligibility requirements to qualify for the benefits, identify limitations on tuition assistance, outline qualifications for successful program participation in relation to the National Guard and successful school matriculation, provide for the manner in which the benefits shall be disbursed and reimbursements made, if required, detail allowable administrative costs applicable to the Commission on Higher Education, and provide that these benefits are subject to funds being appropriated by the General Assembly. A Notice of Drafting for the proposed regulation was published in the State Register on October 26, 2007.

Instructions: Add Regulations 62-250 through 62-263 as stated in Text below.

Text:

62-250. Purpose of the SC National Guard College Assistance Program

Pursuant to Act 40 of 2007, the Commission on Higher Education shall develop a college assistance program for providing incentives for enlisting or remaining for a specified time in both the South Carolina Army and Air National Guards (SCNG). The Commission on Higher Education, along with the South Carolina National Guard, shall promulgate regulation and establish procedures to administer the South Carolina National Guard College Assistance Program. These SC National Guard College Assistance Program benefits will cover the cost of attendance as defined by Title IV regulation, up to a maximum amount each award year. The maximum amount will be made annually and detailed in established procedures, to be administered by the Commission on Higher Education.

62-251. Program Definitions

A. The "Academic Year" shall be defined as that twelve month period as defined by the institution for the awarding of financial aid to a student and which includes regular terms (Fall, Spring, or trimester) or other terms (Summer and other) in any combination.

B. "College assistance program" means any awards made under the South Carolina National Guard College Assistance Program.

C. "Commission" means the South Carolina Commission on Higher Education.

D. "Eligible institution" means:

(1) a public institution of higher learning as defined in Section 59-103-5 and an independent institution of higher learning as defined in Section 59-113-50; and

(2) a public or independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Secondary Schools. Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of "public or independent institution" for purposes of this chapter.

E. "National Guard" means South Carolina Army or Air National Guard.

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F. "Cost of Attendance" is defined as "tuition and fees" charged for registering for credit hours of instruction, costs of textbooks, and other fees and costs associated with attendance at an eligible institution in accordance with Title IV Regulations.

G. "Degree-seeking student" is defined as any student enrolled in an eligible institution which leads to the first one-year certificate, first two-year program or associate's degree, or first bachelor's, or a program of study that is structured so as not to require a bachelor's degree for acceptance into the program (and leads to a graduate degree). Upon completion of the first one-year certificate, first two-year program or associate's degree, or first bachelor's or program of study that is structured so as not to require a bachelor's degree for acceptance into the program (and leads to a graduate degree), the student cannot use scholarship funds to pursue a program in the same or preceding level.

H. "Eligible program of study" is defined as a program of study leading to:

(1) at least a one-year educational program that leads to the first certificate or other recognized educational credential (e.g., diploma) as defined by the U.S. Department of Education for participation in federally funded financial aid programs and prepares students for gainful employment in recognized occupations;

(2) the first associate's degree;

(3) at least a two-year program that is acceptable for full credit towards the first bachelor's degree; or

(4) the first bachelor's degree.

I. "Full-time student" shall mean a student who has matriculated into an eligible program of study and who enrolls full-time, usually 12 credit hours for fall and spring terms.

J. "Less-than full-time student" shall mean a student who has matriculated into an eligible program of study and who enrolls part-time, e.g., usually fewer than 12 credit hours, for the fall and spring terms.

K. "Military mobilization" is defined as a situation in which the U.S. Department of Defense orders members of the United States Armed Forces to active duty away from their normal duty assignment during a time of war or national emergency, or as determined by the South Carolina Military Department.

L. "Remedial/developmental coursework" shall mean sub-collegiate level preparatory courses in English, mathematics, reading and any courses classified as remedial by the institution where the course is taken.

M. "Transfer student" shall be defined as a student who has changed enrollment from one institution to an eligible SC public or independent institution.

N. "Home institution" shall mean the institution where the student is currently enrolled as a degree-seeking student and may be eligible for financial aid at the same institution.

O. "Satisfactory academic progress" shall be defined as the academic progress as required by the institution in which the student is enrolled as a degree-seeking student for financial aid eligibility. The student must meet all requirements for satisfactory academic progress towards the degree/program completion as established by the institution. Should the student's enrollment status not be covered in the institutional policies, completion of all courses with a passing grade is required.

62-252. Program Benefits and Maximum Assistance

A. Qualifying members of the National Guard may receive college assistance program benefits up to an amount equal to one hundred percent of college cost of attendance, provided, however, these college assistance program benefits in combination with all other grants and scholarships shall not exceed the cost of attendance at the particular institutions referenced in section 62-251 subsection (F) in any given award year; and the cumulative total of all college assistance program benefits received may not exceed eighteen thousands dollars.

1. These SC National Guard College Assistance Program benefits cover the cost of attendance as defined by Title IV regulation; however, the benefit maximum per award year may be reduced if, in combination with other financial aid, the cumulative total of all aid received would exceed the cost of attendance. Disbursements of this grant will typically be paid in two (Fall semester, Spring semester, or its equivalent) equal disbursements. Any remaining funds can be used in any sequential terms prior to annual expiration date. If the recipient is in his/her final semester of enrollment as required for degree completion, the recipient may receive up to the full annual benefit in the final semester.

B. A member shall not qualify for college assistance program benefits for more than one hundred thirty semester hours or related quarter hours from the time of initial eligibility into the SC National Guard College Assistance Program.

C. Students who have been awarded a bachelor's or graduate degree are not eligible for the College Assistance Program benefit. Benefits are not to be awarded for graduate degree courses.

D. Less than full - time Students:

The SC National Guard College Assistance Program benefits cannot exceed the cost of attendance as defined by Title IV regulation an academic year to eligible Guard members attending a public or independent institution as defined in section 62-251 subsection (D). Half shall be awarded during the fall term and half during the spring term (or its equivalent). Benefit funds will be awarded prorated, to students not enrolled full time. The prorated method (based on semester calculation) will be based on the Pell Grant model ($\frac{3}{4}$ time; $\frac{1}{2}$ time; less than $\frac{1}{2}$ time (to include $\frac{1}{4}$ and less than $\frac{1}{4}$ time) of the recipient's full time award value.

E. A new application must be submitted by the Guard Member for each separate academic year to the South Carolina National Guard identifying his/her home institution and his/her intent to enroll at that institution.

62-253. National Guard College Assistance Program Terms of Eligibility (Student Eligibility)

A. Members of the National Guard enrolled or planning to enroll in an eligible institution may apply to the South Carolina National Guard for a college assistance program benefit.

B. The South Carolina National Guard College Assistance Program benefits may be applied by giving priority to service members in areas of critical need. The SC National Guard will determine areas of critical need.

C. To qualify, an applicant must:

(1) be in good standing with the active National Guard at the beginning of each academic year and remain a member in good standing with the active National Guard throughout the entire academic year for which benefits are payable;

(2) have valid tuition and fee expenses from an eligible institution;

(3) maintain satisfactory academic progress as defined by the institution;

(4) be a U.S. citizen or a legal permanent resident who meets the definition of an eligible non-citizen under State Residency Statutes;

(5) be admitted, enrolled and classified as a degree-seeking full-time or part-time student at a eligible institution in South Carolina; and

(6) satisfy additional eligibility requirements as may be promulgated by the Commission.

D. Individuals joining the National Guard become eligible for college assistance program benefits on the day of enlistment for sequential regular terms (fall, spring, or trimester) or other terms (summer and other). Enlisted personnel must continue their service in the National Guard during all terms of courses covered by the benefit received. Officers shall continue their service with the National Guard for at least four years after completion of the most recent award or degree completion.

E. National Guard members receiving a full Reserve Officer's Training Corps (ROTC) scholarship are not eligible for college assistance program benefits.

F. National Guard College Assistance scholarship funds may not be applied to the cost of continuing education or graduate coursework.

G. Remedial/developmental or non-degree credit hours shall be used toward the National Guard member's credit hour limit.

H. Students who have already been awarded their first bachelor's degree or graduate degree or who have already completed a program of study that is structured so as not to require a bachelor's degree for acceptance into the program (and leads to a graduate degree) are not eligible to participate in the National Guard College Assistance Program.

I. All documents required for determining the National Guard College Assistance Program eligibility must be initiated and submitted by the student to the institution by the institution's established deadline(s).

1. Currently enrolled members should contact their college's financial aid office to initiate benefit award for the current academic year. The financial aid office will coordinate with the Commission on Higher Education to verify student eligibility and coordinate payment to the college or university on behalf of the student member.

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62-254. Continued Eligibility and Transfer Students

A. Students must meet the following criteria to renew eligibility for the South Carolina National Guard College Assistance Program Benefit:

(1) Continue to meet all eligibility requirements as stated in the National Guard College Assistance Program Terms of Eligibility (Student Eligibility) Section 62-253 (C); and

(2) Students who initially enroll in college mid-year (spring term) may be eligible to receive the tuition assistance the same academic year.

B. Transfer students who receive/participate in the National Guard College Assistance Program and transfer mid-year to another institution may be eligible to receive the assistance for the spring term if they met the eligibility requirements at the end of the previous academic year.

C. The institution where the student is transferring will determine the classification of the entering transferring student based on initial college enrollment and will use this classification to determine the remaining terms of eligibility in compliance with the "Program Benefits and Maximum Assistance" Section 62-252.

D. The home institution will be responsible for obtaining official certification of the student's grade point average, credit hours earned, and satisfactory academic progress for the purposes of determining eligibility for scholarship renewal for the next academic year.

62-255. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs

A. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit are eligible to receive the South Carolina National Guard College Assistance Program benefit funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

62-256. Military Mobilization

A. Service members who are enrolled in college and during which affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. The service member must re-enroll in an eligible institution within twelve months upon demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the student re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education and the South Carolina National Guard by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are mobilized for an entire academic year may renew the scholarship for the next academic year, if they met the eligibility requirements at the end of the prior academic year. Service members who did not use the college assistance program funds/terms of eligibility during this period due to military mobilization shall be allowed to receive the college assistance funds during the succeeding term.

C. The home institution will be responsible for receiving verification of military mobilization status, from the South Carolina National Guard, credit hours earned, and eligibility for benefit renewal for the next academic year.

D. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on military mobilization. The credit hours earned will be used toward the maximum credit hour requirement for the college assistance program.

62-257. Appeals Procedures

A. Students may appeal an adverse determination as to the awarding or continuation of the College Assistance Program benefit to the Office of the Adjutant General.

B. The Adjutant General shall devise procedures addressing student appeals to provide students an opportunity to submit documentation for a second review and determination of award.

62-258. Institutional Policies and Procedures for Awarding

A. Each institution is responsible for reviewing all students based on the “Eligibility Requirements/Satisfactory Academic Progress” to determine eligibility for college assistance.

B. SC National Guard College Assistance awards are to be used only for payment toward the cost-of-attendance as established by Title IV Regulations. The South Carolina National Guard College Assistance Program in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

C. Institutions will notify students of any adjustments in the SC National Guard College Assistance Program benefit funds that may result from an over award, change in eligibility, or change in financial status or other matters.

D. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

(1) Award notification

(2) Institutional disbursement to student

(3) Refunds and repayments (if appropriate)

(4) Enrollment and curriculum requirements

(5) Verification of required number of annual credit hours based on that (s)he is within the eligible 130 credit hours from the time of initial eligibility of the program.

(6) Military mobilization orders (if appropriate)

E. The South Carolina National Guard shall be responsible for providing a list of all eligible Guard members to the Commission on Higher Education, which in turn shall provide this list to all the eligible institutions. Only Guard Members who are on the list shall be awarded the College Assistance Program benefits.

F. Eligible participant lists will be accessed through the CHE portal (via log-on/password); eligibility will reflect assurance that the student is eligible for the annual maximum unless otherwise noted.

G. The South Carolina National Guard College Assistance Program awards are to be used to meet unmet need or to replace any loans or work-study up to the student’s cost-of-attendance.

62-259. Benefits Disbursement and Reimbursements

A. The Commission shall disburse benefits awarded pursuant to this chapter to the eligible institutions to be placed in an account established for each eligible student.

1. In the event that a student who has received a benefit withdraws, is suspended, or otherwise becomes ineligible, the institution must reimburse the College Assistance Program for the amount of the benefit for the applicable term pursuant to the refund policies of the institution.

2. The institution is responsible for collecting any amount due to the institution from the student.

3. In the event a student withdraws or drops below eligibility requirements after the institution's refund period and therefore must pay tuition and fees for full-time or part-time enrollment, the benefits may be retained pursuant to the refund policies of the institution.

B. The institution is responsible for College Assistance funds according to the “Policies and Procedures for Awarding” Section.

62-260. Institutional Disbursements

A. Eligible institutions shall award amounts which, when combined with other financial aid, cannot exceed the student’s cost-of-attendance or defined program award maximums.

B. After the last day to register for each term of the eligible academic year, the institution will verify enrollment of each recipient and award amount based upon enrollment status.

C. The institution must submit a request for funds and/or return of funds by the established deadline each term. In addition, a listing of all eligible recipients by identification numbers with award amounts for the term must be sent to the Commission on Higher Education. At this time any funds must be returned to the Commission on Higher Education immediately.

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D. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

E. At the time of disbursement, the student must be enrolled at the institution indicated as the home institution (on the SC National Guard application form) as a degree-seeking student at the home institution.

62-261. Program Administration and Audits

A. The South Carolina Commission on Higher Education, in conjunction with the South Carolina National Guard, shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with participating institutions.

1. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulations governing the South Carolina National Guard College Assistance Program, and any audits or other oversight as may be deemed necessary to monitor the expenditures of scholarship funds.

2. The South Carolina National Guard shall be responsible for Officers continuing their service with the National Guard for at least four years after completion of the most recent benefit awarded or degree completion.

3. The South Carolina National Guard shall be responsible for any and all student appeals.

4. The South Carolina National Guard shall be responsible for providing a list of all eligible Guard members to the Commission on Higher Education, which in turn shall provide this list to all the eligible institutions. Only Guard Members who are on the list shall be awarded the College Assistance Program benefits.

B. According to the "Audit Policies and Procedures for Benefit and Grant Programs Manual," all eligible institutions that participate in the program must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a South Carolina National Guard College Assistant Program institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the program.

62-262. Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program statutes, guidelines, rules or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution's continued participation in the program and require reimbursement to the South Carolina National Guard College Assistance Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any eligible public or independent institution, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

62-263. Funding

A. Benefits provided through the National Guard College Assistance Program are subject to the availability of funds appropriated by the General Assembly.

B. Up to five percent of the amount appropriated to the college assistance program may be used to defray administrative costs incurred by the Commission associated with the implementation of this chapter.

C. Any funds remaining in the South Carolina National Guard Student Loan Repayment Program shall be transferred to the College Assistance Program in accordance with regulations prescribed by the Commission.

Fiscal Impact Statement:

The Commission on Higher Education estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulations will be approximately \$3,000,000.

Statement of Rationale:

This regulation provides definitions institutions may use to ensure consistent application of the provisions of this article and establishes guidelines for institutional processing of assistantship.

Document No. 4065
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF OCCUPATIONAL SAFETY AND HEALTH
CHAPTER 71
 Statutory Authority: 1976 Code Section 41-15-210

Article I, Subarticles 6 and 7
 Occupational Safety and Health Standards

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, hereby promulgates the following changes to South Carolina Regulations:

In Subarticle 6 (General Industry and Shipyard Employment):

Revisions to Sections 1910.9, 1910.95, 1910.134, 1910.156, 1910.1001, 1910.1003, 1910.1017, 1910.1018, 1910.1025, 1910.1026, 1910.1027, 1910.1028, 1910.1029, 1910.1030, 1910.1043, 1910.1044, 1910.1045, 1910.1047, 1910.1048, 1910.1050, 1910.1051, 1910.1052, 1917.5 as amended in FEDERAL REGISTER, Volume 73, No. 240, pp.75583 – 75588, dated December 12, 2008.

Revisions to Sections 1910.303, 1910.304 as amended in FEDERAL REGISTER, Volume 73, No. 210, p. 64205, dated October 29, 2008.

Revisions to Sections 1910.6, 1910.68, 1910.94, 1910.103, 1910.107, 1910.110, 1910.111, 1910.144, 1910.243, 1910.251, 1910.253, 1910.261 as amended in FEDERAL REGISTER, Volume 72, No. 240, pp. 71064 – 71066, dated December 14, 2007.

Revisions to Section 1917.71 as amended in FEDERAL REGISTER, Volume 73, No. 238, pp. 75289 – 75290, dated December 10, 2008.

In Subarticle 7 (Construction):

Revisions to Sections 1926.20, 1926.60, 1926.62, 1926.761, 1926.1101, 1926.1126, and 1926.1127 as amended in FEDERAL REGISTER, Volume 73, Number 240, pp. 75588 – 75589, dated December 12, 2008. Correction to Section 1926.1101 as published in the FEDERAL REGISTER, Volume 74, No. 6, p. 858, dated January 9, 2009.

Copies of these final regulation changes can be obtained or reviewed at the South Carolina Department of Labor, Licensing and Regulation during normal business hours by contacting the OSHA Standards Office at (803) 896-5811 or on the OSHA website at www.OSHA.gov.

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Document No. 3207

DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 120

Statutory Authority: 1976 Code Sections 40-1-70 and 40-69-70 et seq.

120-1. Board of Veterinary Medical Examiners Chapter Revision

Synopsis:

The Department of Labor, Licensing and Regulation, Board of Veterinary Medical Examiners, in conformance with 2006 Act 294, is repealing existing regulations 120-1.1 through 120-12.1 and replacing with new Regulations 120-1 through 120-13.

Instructions: Repeal existing regulations 120-1.1 through 120-12.1. Add new Regulations 120-1 through 120-13.

Text:

120-1. Definitions.

A. "Comprehensive veterinary services" means: examination, diagnosis and treatment of animal patients, diagnostic imaging, surgery, laboratory, pharmacology, and provision for hospitalization and emergency treatment.

B. "Comprehensive veterinary facility" means: a location where comprehensive veterinary services are offered.

C. "Veterinarian-client-patient relationship" means:

(1) The veterinarian has recently seen and is personally acquainted with the keeping and care of the animal through an examination of or visit to the premises where the animal is kept.

(2) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment.

(3) The veterinarian has sufficient knowledge of the animal to initiate a general or preliminary diagnosis of the medical condition of the animal.

(4) The veterinarian is available or has arranged for emergency coverage for follow-up and evaluation.

(5) The client has agreed to follow the veterinarian's instructions.

(6) The veterinarian-client-patient relationship lapses when the licensee has not seen the animal within one year.

120-2. Elections.

A. The Board shall send a notice to each veterinarian qualified to vote by residence in a congressional district and set a date by which a veterinarian in that nominating district may be nominated for a position.

B. If only two (2) candidates are nominated from a congressional district, the two (2) candidates shall be declared the winners and the names submitted to the governor.

C. If more than two (2) candidates are nominated from a congressional district, the Board shall prepare ballots with the names of the nominees in alphabetical order. The names of the two (2) candidates receiving the highest number of votes will be submitted to the governor.

120-3. Licensure to Practice Veterinary Medicine.

It shall be unlawful for any person to engage in the practice of veterinary medicine unless duly licensed under the applicable provisions of this chapter.

A. Application. Any person desiring to be licensed as a veterinarian must apply to the Board and provide all information and documentation required by the Board. Applications and accompanying documents will be valid for one (1) year from the initial application date. After one (1) year, a new application with attendant documents and appropriate fees must be submitted.

B. Education Transcripts(s). Certified transcripts shall be mailed directly to the Board office from the appropriate educational institution.

(1) Certified transcript from an American Veterinary Medical Association (AVMA) accredited school or college of veterinary medicine, or

(2) Certification from the Program for the Assessment of Veterinary Education (PAVE), or

(3) Certification from the Education Commission of Foreign Veterinary Graduates (ECVFG), or

(4) Certification from another credentialing entity approved by the Board.

(5) Senior students. Senior students must submit an attested letter from the accredited veterinary medical college establishing senior status as of the date of the State examination.

C. Examination.

(1) National Board Examinations. A certified copy of national board examination results with a minimum passing score as set by the National Board of Veterinary Medical Examiners (NBVME).

(2) North American Veterinary Licensing Examination (NAVLE). Certified copy of NAVLE results current within five (5) years of the date of application with a minimum score as set by American Association of Veterinary State Boards (AAVSB).

(3) Clinical Competency Examination. Certified copy of the Clinical Competency Test (CCT) current within five (5) years of the date of the application with a minimum score as set by AAVSB. The requirement for the CCT may be waived if the applicant provides:

(a) Verification of a valid and unrestricted (including probation or other conditions) license to practice veterinary medicine issued by another state, with substantially equivalent licensing requirements as the South Carolina Board of Veterinary Medical Examiners (SCVBME), for a minimum of three (3) years immediately preceding the date of application; and one of the following:

(i) Verification of three (3) full years of active, continuous clinical practice immediately preceding the examination; or

(ii) Verification of passage of an AVMA-recognized Board Certification examination in any field of veterinary medicine; or

(iii) Verification of having earned thirty (30) hours of continuing education credits within two (2) years of the date of application.

(4) South Carolina State Law and Ethics Examination. Minimum passing score of the South Carolina state law and ethics examination as set by the SCBVME. An applicant who fails SCBVME may be reexamined upon submission of an application, and payment of examination fee.

D. Verification(s) of Licensure. Verification from each state, active or inactive, in which the applicant is or has been licensed.

E. Photographs. One recent passport photograph taken within the last six (6) months of application date.

F. Fees. A non-refundable certified check or money order.

G. Denial of Application. An application may be denied if the applicant:

(1) is currently restricted (including probation or other conditions) in another state;

(2) has committed any act that would be grounds for disciplinary action under this chapter; or

(3) has committed any act which indicates that the applicant does not possess the character and fitness to practice veterinary medicine.

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120-4. Licensure to Practice Veterinary Technology.

It shall be unlawful for any person to engage in the practice of veterinary technology unless duly licensed under the applicable provisions of this chapter.

A. Application. Any person desiring to be licensed as a veterinarian technician must apply to the Board and provide all information and documentation required by the Board. Applications and accompanying documents will be valid for one (1) year from the initial application date. After one (1) year, a new application with attendant documents and appropriate fees must be submitted.

B. Education Transcript(s). Certified transcripts shall be mailed directly to the Board office from the appropriate educational institution.

(1) Certified transcripts from an accredited school or college of veterinary technology, or

(2) Certification from Board approved veterinary technology educational institution.

C. Examinations.

(1) Veterinary Technician National Examination. Certified minimum passing score of national examination as set by AAVSB.

(2) South Carolina State Law and Ethics Examination. Minimum passing score as set by SCBVME.

120-5. Biennial License Renewal.

A. Active License.

It is the responsibility of each licensee to apply for license renewal. Any person who shall practice veterinary medicine or veterinary medical technology after such expiration of license shall be practicing in violation of the law.

(1) Licenses shall be renewed biennially upon submission of renewal fee and Biennial Renewal Form.

(2) Failure to apply for renewal within thirty (30) days after expiration of license term shall result in automatic lapse of license. In addition to the renewal fee, a late fee shall be assessed.

B. Renewal of Lapsed License.

The right to practice in South Carolina is suspended until the following requirements are met.

(1) A veterinarian or veterinary technician whose license has lapsed within three (3) years from the date of renewal may reactivate the license by submitting satisfactory evidence of continuing education, if applicable, and payment of the renewal fee plus the applicable penalty.

(2) A veterinarian or veterinary technician whose license has been lapsed for three (3) years or longer must meet the requirements in effect at the time of application for a new license. The Board may also assess an additional penalty.

120-6. Continuing Education Requirements; Waivers.

A. Continuing Education Requirements. Failure to satisfy continuing education requirements for biennial renewal shall result in automatic revocation of license. Any licensee who continues practice of veterinary medicine after such revocation shall be in violation of this chapter and subject to applicable disciplinary action.

(1) As a pre-requisite for biennial renewal,

(a) the veterinarian must complete a minimum of thirty (30) hours of continuing education;

(b) the veterinary technician must complete a minimum of ten (10) hours of continuing education.

(2) Credit hours may be earned by completion of programs offered through the following sponsors:

(a) The American Veterinary Medical Association (AVMA), American Animal Hospital Association (AAHA), the South Carolina Association of Veterinarians (SCAV);

(b) The Registry of Approved Continuing Education of the American Association of Veterinary State Boards (RACE);

(c) State association-sponsored Academies;

(d) AVMA recognized specialty boards; or

(e) such other programs as may be approved by the Board.

(3) Of the thirty (30) required hours,

- (a) no more than eight (8) hours may be taken in practice management or practice building;
- (b) the remaining twenty-two (22) hours must be in clinical medical courses;
- (c) no more than fifteen (15) hours may be obtained through distance learning programs, of which no more than three (3) hours may be from journal programs and audio programs, respectively.

(4) Each veterinarian must maintain a record of attendance at the meetings qualifying for continuing education for a minimum of three (3) years immediately preceding renewal. The licensee must maintain documentation to include:

- (a) name and license number of the participant;
- (b) name of provider;
- (c) name of program;
- (d) hours completed;
- (e) date of completion;
- (f) authorized signature provided by sponsoring organization; and
- (g) follow-up testing as part of the program.

B. Waiver of Continuing Education Requirements. The continuing education requirement is waived for the licensed practitioner for the first year of licensure.

C. Fee Waiver During Period of Temporary Medical Disability.

Upon written request, a licensed veterinarian may apply for a waiver of the license renewal fee and other requirements of no more than three (3) years due to a temporary medical disability which prevents the licensee from practicing veterinary medicine. Upon approval by the Board of this request, the licensee will be placed in an inactive status and the license held by the veterinarian will no longer be valid. The licensee may apply for license reactivation after the period of disability.

120-7. Continuing Education Provider and Sponsor Approval.

Providers or sponsors of continuing education must be approved by the South Carolina Board of Veterinary Medical Examiners.

A. Providers and sponsors seeking approval for educational programs must submit a written request to the Board offices at least ninety (90) days prior to the scheduled date of the presentation.

B. Providers and sponsors must provide adequate documentation of licensee's participation in the program. Such documentation shall include:

- (1) name and license number of participant;
- (2) name and address of provider or sponsor;
- (3) name of program;
- (4) hours completed;
- (5) date of program and location of program;
- (6) authorized signature from program provider or sponsor.
- (7) Providers of distance learning program must also provide document of follow-up testing, if applicable.

C. Comprehensive Approval. A comprehensive approval allows the provider or sponsor to submit an application indicating all course offerings for a given calendar year. Requests for a comprehensive approval may be submitted to the Board office on an annual basis at least ninety (90) days prior to the beginning of each year or ninety (90) days prior to the beginning of a scheduled program. Providers and sponsors shall be responsible for annual renewal of course offerings. Programs offered by the American Veterinary Medical Association (AVMA), American Animal Hospital Association (AAHA), the South Carolina Association of Veterinarians (SCAV), State association-sponsored Academies or AVMA recognized specialty boards shall receive comprehensive approval.

120-8. Practice Standards for Licensed Veterinarians.

A. Licensed veterinarians shall comply with the American Veterinary Medical Association (AVMA) Code of Professional Ethics.

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B. Recordkeeping. Licensed veterinarians shall comply with the following standards for medical record keeping and retention.

(1) Veterinarians performing any act requiring a license pursuant to the provisions of the Veterinary Practice Act shall prepare, or cause to be prepared, a written record concerning the animal(s).

(2) The medical record shall contain the following information:

- (a) Name, address and telephone number of animal's owner;
- (b) Name and identification of animal, to include the age, sex, species and breed of animal;
- (c) The animal's medical history to include:
 - (i) Treatment dates;
 - (ii) Diagnosis or condition at the beginning of animal care;
 - (iii) Medication and treatment, including amount, route and frequency of administration;
 - (iv) Progress and disposition of the case; and
 - (v) Surgery, radiology, laboratory information.

(3) Records for groups of economic animals may be maintained on a per client basis.

(4) Rabies vaccination records shall comply with all Department of Health and Environmental Control (DHEC) requirements, including, but not limited to record content, record retention, public health record retrieval request responses, location of records and ownership of records. Compliance with all DHEC requirements is the professional responsibility of the veterinarian performing the vaccination and signing the rabies certificate.

(5) An electronic record satisfies all requirements that a record be in writing.

C. Record Storage.

(1) Records shall be maintained for a minimum of three (3) years after the last entry, or as otherwise provided by law.

(2) A radiograph is the property of the facility where the original radiograph was exposed.

(3) The original or a copy must be released upon the request of another veterinarian who has the written authorization of the owner of the animal.

(4) Radiograph(s) shall be returned within thirty (30) days to the originating facility.

120-9. Practice Standards for: Licensed Veterinary Technicians; Unlicensed Veterinary Assistants.

Licensed veterinarians shall supervise the practice of licensed veterinary technicians and unlicensed veterinary assistants.

A. Licensed Veterinary Technicians. Duties shall be performed under the direction, supervision and control of a South Carolina licensed veterinarian who has established a veterinarian-client-patient relationship.

(1) Immediate Supervision:

- (a) Surgical assistance to a licensed veterinarian.
- (b) Floation or dress equine teeth.

(2) Direct Supervision:

- (a) Induction, maintenance and recovery of anesthesia.
- (b) Perform dental procedure including, but not limited to:
 - (i) prophylaxis,
 - (ii) procedures not altering the shape, structure, or positional location of teeth in the dental arch.
- (c) Perform euthanasia.
- (d) Administer blood or blood components as related to blood transfusions.
- (e) Apply splints, bandages and slings.
- (f) Perform non-emergency intubations.
- (g) Measure medication quantities as prescribed by a licensed veterinarian.
- (h) Perform arterial catheterization/arterial collection.
- (i) Perform central venous catheterization.
- (j) Administer vaccines as allowed by law.

(3) Indirect Supervision:

- (a) Administration and application of treatments, drugs, medications and immunological agents by parenteral (to include subcutaneous, intradermal, intramuscularly, intraperitoneal and intravenous) and non-parenteral routes, except when in conflict with government regulations.
- (b) Initiate of parenteral fluid administration.
- (c) Perform peripheral venous catheterizations.
- (d) Perform radiography including settings, positioning, exposing, processing and safety procedures.
- (e) Collect venous blood specimen as allowed by law.
- (f) Collect urine by free catch, expression, cystocentesis or catheterization.
- (g) Collect and prepare tissue, cellular or microbial samples by skin scrapings, impressions or other non-surgical methods.
- (h) Perform routine diagnostic laboratory tests.
- (i) Supervise handling of bio hazardous waste materials.
- (j) Collect and prepare blood or blood components as related to blood transfusions.
- (k) Other services under the appropriate degree of supervision of a licensed veterinarian.

(4) Emergency Patient Care.

A licensed veterinary technician working under the indirect supervision of a licensed veterinarian may provide the following emergency patient care:

- (a) Application of tourniquets and/or pressure bandages to control hemorrhage.
 - (b) Resuscitative procedures.
 - (c) Application of temporary splints or bandages to prevent further injury to bones or soft tissues.
 - (d) Application of appropriate wound dressings and external supportive treatment in severe wound and burn cases.
 - (e) Perform external supportive treatment in heat prostration cases.
 - (f) Administer pharmacological agents and fluids only:
 - (i) in the presence of a licensed veterinarian;
 - (ii) by protocol established by a licensed veterinarian; or
 - (iii) after direct communication with a licensed veterinarian.
- (5) Practice Limitations. Licensed veterinary technicians shall not be permitted to:
- (a) Make any diagnosis or prognosis.
 - (b) Prescribe any treatments, drugs, medications, or appliances.
 - (c) Perform surgery.
 - (d) Identify as a licensed veterinarian or anything other than a licensed veterinary technician.

B. Unlicensed Veterinary Assistants. The licensed veterinarian shall verify and document qualifications of unlicensed veterinary assistants. Trained but unlicensed veterinary assistants may perform the following under the direction, supervision and control of a licensed veterinarian with an established veterinarian-client-patient relationship.

(1) Immediate supervision:

- (a) Surgical assistance to a licensed veterinarian.
- (b) Induce anesthesia.
- (c) Apply splints and slings.
- (d) Collect urine by cystocentesis.
- (e) Collect, prepare and administer blood or blood component as related to blood transfusion.

(2) Direct supervision:

- (a) Collect and prepare tissue, cellular or microbiological samples by skin scrapings, impressions or other non-surgical methods, except when in conflict with other state or federal regulation.
- (b) Blood collection for diagnostic laboratory tests.
- (c) Maintenance of and recovery from anesthesia.
- (d) Dental procedures including, but not limited to:
 - (i) prophylaxis, and
 - (ii) procedures not altering the shape, structure, or positional location of teeth in the dental arch.
- (e) Placement of intravenous catheters.

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- (f) Administer parenteral fluids.
- (g) Radiography including patient restraint, processing, and safety procedures.
- (h) Supervise handling of bio hazardous waste materials.
- (i) Administer and apply treatments, drugs, and medications, and immunological agents by parenteral and non-parenteral routes as allow by law.
- (j) Routine laboratory test procedures.
- (k) Collect urine by catheterization.
- (3) Indirect supervision:
 - (a) Collect feces.
 - (b) Collect urine by free catch only.
 - (c) Groom.
 - (d) Non-invasive topical treatments.
- (4) Emergency Conditions. An unlicensed veterinary assistant may perform the following under indirect supervision of a licensed veterinarian.
 - (a) Life-saving aid and treatment:
 - (i) Apply tourniquets and/or pressure bandages to control hemorrhage.
 - (ii) Resuscitative procedures.
 - (iii) Apply temporary splints or bandages to prevent further injury to bones or soft tissues.
 - (iv) Apply appropriate wound dressings and external supportive treatment in severe wound and burn cases.
 - (v) Perform external supportive treatment in heat prostration cases.
 - (vi) Place intravenous catheters and administer pharmacological agents and fluids.
- (5) An unlicensed veterinary assistant shall not:
 - (a) Make any diagnosis or prognosis.
 - (b) Prescribe any treatments, drugs, or medications.
 - (c) Perform surgery.
 - (d) Identify as a licensed veterinarian, licensed veterinary technician, or in any way other than an unlicensed veterinary assistant.

120-10. Veterinary Facilities. General Requirements; Laboratory Services; Surgical; Pharmacological; Emergency Treatment.

A. General Requirements.

- (1) All areas of the premises shall be maintained in a clean, offensive-odor free and orderly condition at all times.
- (2) All required equipment must be in satisfactory working order.
- (3) The minimum standards for all facilities shall include:
 - (a) Adequate heating and cooling for the comfort of the animals;
 - (b) Sufficient ventilation in all areas;
 - (c) Proper lighting in all rooms;
 - (d) Hot and cold running water from an approved source;
 - (f) Adequate toilets and lavatories for personnel and clients;
 - (g) Sanitary storage which is adequate for the size of the facility;
 - (h) Interior and exterior receptacles for waste disposal which shall comply with state and local regulations;
 - (i) A procedure for the prompt, sanitary and aesthetic disposal of dead animals which complies with state and local regulations;
- (4) Examination Areas. The facility examination area shall have:
 - (a) Waste receptacles or chutes;
 - (b) A table with impervious top surface; and
 - (c) Proper lighting.

B. Laboratory Services.

(1) A facility where examination, diagnosis and treatment of or surgery on animal patients is provided by a veterinarian shall have an in-house laboratory or the services of a consultant laboratory for blood chemistries, cultures and antibiotic sensitivity examinations, complete blood counts, histopathological examinations, occult heartworm determination, and complete necropsies.

(2) Laboratory facilities must have a minimum capability to conduct:

- (a) standard urinalysis;
- (b) micro-hematocrit determination;
- (c) fecal flotation tests for ova of internal parasites;
- (d) dermal scrapings for external parasite diagnosis;
- (e) examination for microfilaria and occult heartworm detection; and
- (f) feline leukemia and feline immunodeficiency virus testing.

(3) In-house laboratory facility standards:

- (a) Clean and orderly;
- (b) Ample storage;
- (c) Ample refrigeration.

C. Surgical Facilities.

(1) Surgery shall be performed in a room that can be easily sanitized and is free of unnecessary traffic flow during surgical procedures.

(2) Sterilization must include a steam pressure sterilizer, gas sterilizer, autoclave equipment or cold sterilization. Cold sterilization must be used in conjunction with a steam pressure sterilizer, gas sterilizer or autoclave equipment.

- (3) Surgical instruments and equipment shall be consistent with the surgical service being provided.
- (4) Storage in the surgery area shall be limited to surgical items.
- (5) Emergency drugs must be available to the surgery area.
- (6) Sterilized instruments, gowns, towels, drapes, gloves, caps and masks shall be available for surgery.
- (7) Positive pressure and oxygen shall be available in medical facility environments.

D. Pharmacological Facilities.

(1) A veterinarian shall not prescribe, dispense or administer any drug or biological agent that bears the legend "Caution: Federal Law restricts this drug to the use by or on the order of a licensed veterinarian," or any other term which specifies the medication as a legend drug, without the establishment of a veterinarian/client/patient relationship.

(2) The supervising veterinarian shall:

- (a) maintain all drugs and biological agents in compliance with state and federal laws;
- (b) ensure that any legend drugs and biological agents prescribed for use in the veterinary facility are properly administered;
- (c) maintain accurate records to include the strength, dosage and quantity of all medications used or prescribed;
- (d) instruct clients on the administration of drugs when applicable.

(3) Repackaged Legend Drugs.

(a) Repackaged legend drugs shall be dispensed in approved safety closure containers, where applicable.

(b) Repackaged legend drugs dispensed shall be labeled with the following:

- (i) name, address and telephone number of the facility;
- (ii) client's last name;
- (iii) patient's name;
- (iv) date dispensed;
- (v) directions for use;
- (vi) name of the drug and its strength (if more than one dosage form exists) and the amount of the drug dispensed; and
- (vii) name of the prescribing veterinarian.

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(4) The veterinarian shall maintain records of all medications prescribed and dispensed for any animal in that animal's file. The pharmaceutical record information may be transferred, in whole or in part, from one veterinarian to another, in writing or by telephone, when necessary to continue treatment or disease prevention by medication started by the original attending veterinarian.

(5) Federal Drug Enforcement Administration Registration. A veterinarian who has a Federal Drug Enforcement Administration (DEA) number and uses, dispenses, administers or prescribes controlled substances shall comply with the federal and state laws pertaining to the dispensing, prescribing, storage and usage of controlled substances. All controlled substances dispensed or prescribed shall be recorded in a controlled substance register. Each veterinarian who maintains a DEA registration shall maintain a controlled substance register in compliance with DEA requirements.

E. Emergency Treatment Facilities.

(1) Emergency treatment may be provided by:

(a) a veterinarian on the premises at all times to receive and manage emergency cases; or

(b) a veterinarian who is on-call and available to receive and manage emergency cases as requested.

(2) Public Notice. The public shall be informed of the available emergency services by a "Notice to the Public" posting. The notice shall be prominently located and easily accessible to clients. The posting shall include contact information for the on-call veterinarian or other veterinary facilities offering additional emergency services.

120-11. Limited Veterinary Services Facilities; Multiple Practice Facilities; Mobile Veterinary Facilities.

A. Limited Veterinary Services Facilities. Limited veterinary services facilities shall:

(1) Adhere to requirements as set forth in Section 120.10(A).

(2) Establish veterinarian-client-patient relationship.

(3) Notify the public of available services through a posted "Notice to the Public" prominently posted at sites available to clients, and reference veterinary facilities offering services not available in the facility.

B. Multiple Practice Facilities. Two or more practices occupying the same facility shall post a notice of services provided by each practice.

C. Mobile Veterinary Facilities.

(1) Mobile Veterinary Facilities Defined: Any mobile facility or similar form of clinical veterinary practice that may be transported or moved from one location to another for delivery of services.

(2) Mobile veterinary facilities shall maintain a permanent office location that can be contacted by telephone and other appropriate communication channels.

(3) Telephone, fax, and or e-mail contact information shall be prominently posted in a place easily accessible to clients or shall be provided to clients individually in writing.

120-12. Veterinary Medicine and Animal Shelters.

A. The Board does not regulate the activities of shelter owners.

B. Veterinarians who provide services to animals in shelters are not required to keep client-patient records as otherwise required by these regulations.

C. Where a shelter or a licensed veterinarian in conjunction with a shelter provides veterinary services, the licensed veterinarian is subject to requirements as set forth under Section 40-69, et seq. and this chapter.

120-13. Facility Inspection.

An agent of the Department of Labor, Licensing and Regulation shall enter during normal business hours and have the right to inspect the facility for compliance. A written report of the inspection shall be prepared and a copy shall be provided to the facility.

Fiscal Impact Statement:

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

Statement of Rationale:

The purpose of the regulations is to repeal existing regulations and add new Regulations 120-1 through 120-13 in conformance with and to implement the provisions of 2006 Act 294.