

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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THE SOUTH CAROLINA STATE REGISTER

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

STYLE AND FORMAT OF THE SOUTH CAROLINA STATE REGISTER

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

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

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

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

Pending Regulations Submitted to 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.

2002 PUBLICATION SCHEDULE

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

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

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

REPRODUCING OFFICIAL DOCUMENTS

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

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

CERTIFICATE

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

Lynn P. Bartlett
Editor

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

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

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SUBSCRIPTIONS

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REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

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: www.scstatehouse.net

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2533	R111 SR25-9	Criminal Justice Information System		Law Enforcement Division
2609	R160 SR26-1	State Human Resources		Budget and Control Board
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2600		Need-based Grants Program	1 22 02	Commission on Higher Education
2601		Palmetto Fellows Scholarship Program	1 22 02	Commission on Higher Education
2569		Types and Levels of Credential Classif	1 27 02	Board of Education
2602		Hunt Units and Wildlife Management	2 04 02	Department of Natural Resources
2566		Graduation Requirements	3 09 02	Board of Education
2616		Well Standards	3 10 02	Department of Health and Envir Control
2518		Perinatal Care	3 16 02	Department of Health and Envir Control
2620		Percentage Storm or Wind/Hail Deduct	3 26 02	Department of Insurance
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2621		Retail Managers; Finance Managers	4 01 02	LLR: Manufactured Housing Board
2586		Definition of a Limousine	4 13 02	Public Service Commission
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2626		Licensing Nonpublic Postsecondary Ed Instit	5 01 02	Commission on Higher Education
2610		In Car Camera Videotaping Equipment	5 06 02	Department of Public Safety
2611		Highway Patrol, Wrecker Regulations	5 06 02	Department of Public Safety
2623		Standards for Permitting Body Piercing	5 07 02	Department of Health and Envir Control
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2631		Staff Leasing Services	5 07 02	Department of Consumer Affairs
2640		Hazardous Waste management	5 07 02	Department of Health and Envir Control
2643		Operation of Health Maintenance Org	5 07 02	Department of Health and Envir Control
2637		Classified Waters	5 07 02	Department of Health and Envir Control
2645		Public Swimming Pools	5 07 02	Department of Health and Envir Control
2630		Drought Planning Response	5 07 02	Department of Natural Resources
2659		End-of-Course Tests	5 07 02	Board of Education
2664		Requirements for Limited License	5 07 02	LLR: Board of Medical Examiners
2678		SC National Guard Student Loan Prog	5 07 02	Commission on Higher Education
2660		Standards for Licensing Hospices	5 08 02	Department of Health and Envir Control
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2661		State Primary Drinking Water	5 08 02	Department of Health and Envir Control
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2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

REQUESTED TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

DOC No.	DATE	SUBJECT	AGENCY
2573	4 24 01	Food Stamp Program	Department of Social Services

RESOLUTION INTRODUCED TO DISAPPROVE (120 DAY REVIEW PERIOD TOLLED)

DOC No.	DATE	SUBJECT	AGENCY
2360	1 17 01	LIFE Scholarship	Commission on Higher Education

WITHDRAWN:

DOC NO.	DATE	SUBJECT	AGENCY
2564	1 09 02	Accreditation Criteria	Board of Education

2001-43

WHEREAS, John Shiflet has resigned his McCormick County School District Board of Trustees seat; and

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

WHEREAS, by Resolution dated November 20, 2001, the McCormick County Council recommended Willmott (Bill) Abbuhl for appointment to the vacancy of the McCormick County School District Board of Trustees; and

WHEREAS, Willmott (Bill) Abbuhl of 204 Milford Place, McCormick, South Carolina, 29835 is a fit and proper person to serve as a member of the McCormick County School District Board of Trustees.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Willmott (Bill) Abbuhl as a member of the McCormick County School District Board of Trustees until the next general election and until his successor shall qualify.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 14th DAY OF
DECEMBER, 2001.

JIM HODGES
Governor

2002-01

WHEREAS, a severe winter storm which began January 2, 2002, is currently impacting the State of South Carolina, with the potential for accumulation of large amounts of snow and ice throughout the State; and

WHEREAS, the effects of the storm may require assistance for stranded motorists, medical emergencies, and logistical support to local governments; and

WHEREAS, this severe weather has significant potential to down trees, block roads, create power outages, and isolate many citizens, and may surpass the capability of local governments to adequately respond to and recover from its effects.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Laws of the State of South Carolina, I hereby declare that a state of emergency exists and direct the South Carolina Emergency Operations Plan be placed in effect and required state agencies to support the responsibilities and taskings therein.

4 EXECUTIVE ORDERS

I further direct the South Carolina National Guard be placed on state duty and order utilization of the South Carolina National Guard's personnel and appropriate equipment, at the discretion of the Adjutant General and in coordination with the South Carolina Emergency Preparedness Division, to take such necessary and prudent actions to prepare for and respond to the hazards posed by this severe winter weather, specifically to protect life and property.

The provisions of this Executive Order shall remain in full force and effect until further order of this office.

GIVEN UNDER MY HAND AND THE SEAL OF THE
STATE OF SOUTH CAROLINA, THIS THIRD DAY OF
JANUARY, 2002.

JIM HODGES
Governor

2002-02

WHEREAS, by Executive Order 2002-01, the Governor declared a state of emergency for the State of South Carolina because of hazardous weather conditions caused by a winter storm; and

WHEREAS, the severe winter storm which began January 2, 2002, and resulted in accumulations of snow and ice throughout the State has concluded and conditions are no longer hazardous; and

WHEREAS, because of the hazardous weather conditions, state offices were closed from 1:00 p.m., Wednesday, January 2, 2002, until 5:00 p.m., Friday, January 4, 2002.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Laws of the State of South Carolina, I declare that a state of emergency no longer exists and hereby declare that Executive Order 2002-01 is cancelled, rescinded, and from this date declared null and void.

Furthermore, pursuant to Act 66 of 2001, Section 63C.21, any and all state employees absent from work due to the hazardous weather emergency between 1:00 p.m., Wednesday, January 2, 2002, and 5:00 p.m., Friday, January 4, 2002, are hereby granted leave with pay.

GIVEN UNDER MY HAND AND THE SEAL OF THE
STATE OF SOUTH CAROLINA, THIS FOURTH DAY OF
JANUARY, 2002.

JIM HODGES
GOVERNOR

2002-03

WHEREAS, by Executive Order 2002-01, a state of emergency was declared and existed in the State of South Carolina from January 2, 2002, to January 4, 2002, due to a severe winter storm with large accumulations of snow and ice which resulted in hazardous conditions throughout the State; and

WHEREAS, because of the state of emergency and hazardous weather conditions, it was necessary for most banks and savings and loan institutions throughout the State to be closed for the entire business day of Thursday, January 3, 2002.

NOW, THEREFORE, pursuant to the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of this State, and specifically Section 53-5-55 of the South Carolina Code of Laws, I hereby declare January 3, 2002, a legal holiday for banks and savings and loan institutions in the State of South Carolina.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS NINTH DAY
OF JANUARY, 2002.

JIM HODGES
Governor

2002-04

WHEREAS, Captain Daniel G. McCollum, United States Marine Corps, was killed in a plane crash in Pakistan on January 9, 2002; and

WHEREAS, Captain Daniel G. McCollum, a South Carolina native, was killed in action while serving his country in the war against terrorism in Afghanistan; and

WHEREAS, Captain Daniel G. McCollum died fighting terrorism, defending freedom, and serving his country, and his loss warrants the citizens of the State of South Carolina to appropriately show respect for his heroic service and supreme sacrifice.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Laws of the State of South Carolina and of the United States of America, I hereby order that the flags of the United States and the State of South Carolina be flown at half-staff upon all state buildings and grounds until sunset January 11, 2002, in honor of Captain Daniel G. McCollum.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 10th DAY OF
JANUARY 2002.

JIM HODGES
Governor

6 NOTICES

STATE BOARD OF EDUCATION NOTICE OF SCHEDULING OF PUBLIC HEARING

The State Board of Education issued a Notice of Proposed Regulation for the proposed Promulgation of Regulation 43-63, Requirements for Trade and Industrial Certification (New Title: Requirements for Career and Technology Education Work-Based Certification), Doc. No. 2683, in the October 26, 2001, issue of the *State Register*. A public hearing was held before the State Board of Education on December 11, 2001, and the regulation was promulgated by the State Board of Education. This promulgated regulation needs a further revision concerning the Praxis II requirement before being submitted to the legislature for approval, therefore a public hearing on the proposed revision to R43-63 is scheduled for March 12, 2002.

The public hearing to be conducted by the State Board of Education to amend this regulation has been scheduled for March 12, 2002, at 10:00 A.M. in the basement conference room of the Rutledge Building, 1429 Senate Street, Columbia, S.C. Persons desiring to make oral comments at the hearing are asked to provide copies of their presentation for the record.

Interested persons are also provided an opportunity to obtain a copy of the proposed amendments to the regulation and to submit comments on the proposed amendments by writing to or emailing Dr. Sandy Rowe, Office of Teacher Certification, at Srowe@SCTeachers.org. Comments can also be emailed to Dr. Bob Couch, Office of Career and Technology Education, at jcouch@sde.state.sc.us. Comments must be received no later than 5:00 P.M. on February 25, 2002. All comments received through February 25, 2002, will be submitted to the board for consideration at the public hearing in a summary of public comments and department response. All comments made at the public hearing will also be given consideration in formulating the final version of the regulation.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication January 25, 2002, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Richland County

Renovation for the addition of a fourth Special Procedures Lab and expansion of the Radiology Observational Care Unit from eight (8) to sixteen (16) observation beds in the Radiology Department.

Palmetto Richland Memorial Hospital
Columbia, South Carolina
Project Cost: \$2,289,925

Affecting Sumter County

Conversion of Nineteen (19) psychiatric beds to nineteen (19) acute care beds for a total of 248 acute care beds and 18 nursing home beds.

Tuomey Regional Medical Center
Sumter, South Carolina
Project Cost: \$-0-

Affecting York County

Renovation of six (6) existing operating rooms within the hospital, with no change in the licensed bed capacity.
Piedmont Healthcare System
Rock Hill, South Carolina
Project Cost: \$1,245,569

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning January 25, 2002. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Pickens County

Expansion and renovation of the emergency department with no change in the existing licensed bed capacity of the hospital.
Cannon Memorial Hospital
Pickens, South Carolina
Project Cost: \$1,065,048

Affecting Richland County

Renovation of existing space for the addition of a 6th cardiac catheterization lab with no change in the existing licensed bed capacity.
Providence Hospital
Columbia, South Carolina
Project Cost: \$1,400,000

Merger of Bernardin Hospice House's twelve (12) existing nursing home beds with the existing twenty (20) nursing home beds at Benzie T. Rice Home, for a total of thirty-two (32) nursing home beds at Rice Nursing Center.
Rice Nursing Center
Columbia, South Carolina
Project Cost: \$ 10,666.77

Affecting Spartanburg County

Purchase of a Positron Emission Tomography (PET) Scanner and renovation to accommodate the equipment.
Mary Black Memorial Hospital
Spartanburg, South Carolina
Project Cost: \$2,935,200

8 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

ERRATA

R.61-87, Underground Injection Control Regulations, was last amended by State Register Document No.2539 published in the State Register on November 24, 2000. This amendment was promulgated to comply with federal law for consistency with federal regulation. This errata is being published to correct errors as follows:

1. At 61-87.2.G, definition of “Drywell”, the word “subsidence” in the definition should be “subsurface”. A “subsidence” fluid distribution system as written in the definition does not exist. This section is corrected to read as follows:

G. “Drywell” means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

2. At 61-87.2.DD.1, definition of “Sanitary waste”, the word “waster” is misspelled and should be “water”. This section is corrected to read as follows:

(1) “Sanitary waste” means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparations, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of the wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the water is not mixed with industrial wastes.

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

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

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) proposes to amend R.61-69, *Classified Waters*. Interested persons are invited to submit their views and recommendations in writing to Gina L. Kirkland, Water Quality Standards Coordinator, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, written comments must be received no later than 5:00 p.m. on February 25, 2002.

Synopsis:

Section 303(c) of the Federal Clean Water Act (CWA) requires that South Carolina establish water quality standards that are sufficiently protective to maintain the existing and classified uses of all waters of the State. The Department recently was asked to evaluate that a site-specific standard for dissolved oxygen (DO) currently established for the Saluda River (Main Stem) from the Lake Murray Dam to the confluence with the Broad River, which is classified as Trout Put, Grow, and Take (TPGT), is not supporting the established use. The Department has prepared this notice of drafting to begin the process of revising the site-specific standard to one that will fully support the TPGT classification. There are also tributaries associated with this waterbody that are unnamed in R.61-69 and, by default, have assumed the TPGT classification (excluding the site-specific standard). These waters do not support trout species and the Department proposes to classify these waters by name in this revision with the appropriate classification of Freshwaters.

Legislative review will be required.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF PHARMACY
CHAPTER 43**

Statutory Authority: 1976 Code Sections 40-43-10 et seq.

Notice of Drafting:

The Board of Pharmacy is proposing a regulation to amend Regulation 99-43 to add "Non-Resident Wholesale Distributor" as Facility Permit Classification. Interested persons should submit their views in writing to Tom Wilcox, Department of Labor, Licensing and Regulation, Post Office Box 11927, Columbia, South Carolina 29211-1927.

Synopsis:

This Regulation simply adds non-resident wholesale distributors as an additional classification for which facility permits are issued. This Regulation clarifies the responsibilities and duties of the Board of Pharmacy in reference to non-resident wholesale distributors.

10 DRAFTING

DEPARTMENT OF NATURAL RESOURCES

CHAPTER 123

Statutory Authority: 1976 Code Sections 50-15-30,50-15-70

Notice of Drafting:

The South Carolina Department of Natural Resources is proposing to amend the existing falconry regulations pertaining to the taking period for legal trapping of raptors in the state.

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

Synopsis:

The proposed amendment will change the current legal raptor trapping period for licensed falconers from 1 October through 31 January to 1 September through 31 December. This change is advocated by the falconry community primarily in order to take advantage of the fall migration flight for Merlins (*Falco columbarius*), many of which pass through coastal South Carolina in September. Merlins are considered excellent falconry birds; only general and master class falconers would be authorized to take them. The change should have no impact on apprentice class falconers, which are authorized to take only American Kestrels (*Falco sparverius*) or Red-tailed Hawks (*Buteo jamaicensis*). The proposed new trapping season will be the same length as the current one.

Document No. 2723

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

Statutory authority: 1976 Code Section 47-4-30 and 47-17-130

R.27-1023 State Meat Inspection Regulation

Preamble:

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection of meat and meat food products produced for intrastate commerce. These updated regulations are necessary to comply with the Federal Meat Inspection Act (21USCA 661, Section 301) which established Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations "at least equal to" those adopted by the federal government. This regulation will, in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on November 23, 2001.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be held at the South Carolina Meat-Poultry Inspection Department, 500 Clemson Road, Columbia, S.C. on March 8, 2002, at 10:00 a.m. If no request is received by March 1, 2002, the hearing will be canceled. Written comments may be directed to Dr. Daniel E. Lafontaine, Director, South Carolina Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, SC 29224-2406 not later than March 1, 2002.

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: State Meat Inspection Regulations

Purpose: To modernize, clarify and update the existing regulations which govern the inspection of meat products produced for intrastate commerce. These updated regulations are necessary to comply with the federal Meat Inspection Act, which establishes the Federal-State Cooperative Inspection Program. This cooperative agreement requires that state regulations be "at least equal to" applicable federal regulations, in return for which the federal government furnishes 50% of the funds required to maintain the state program. These regulations will allow the state program to maintain compliance with the terms of the federal cooperative agreement.

Legal Authority: 1976 Code Section 47-4-30, 47-17-130.

Plan for Implementation: The state meat inspection program has been in existence for many years, implementation of these proposed regulations will clarify and update the existing regulations.

Text:

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

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Document No. 2724

CLEMSON UNIVERSITY

STATE LIVESTOCK-POULTRY HEALTH COMMISSION

CHAPTER 27

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

R 27-1022 State Poultry Regulations

Preamble:

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce. These updated regulations are necessary to comply with the federal Poultry Products Inspection Act (21USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations "at least equal to" those adopted by the federal government. This regulation will, in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on November 23, 2001.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be held at the South Carolina Meat-Poultry Inspection Department, 500 Clemson Road, Columbia, S.C. on March 8, 2002, at 10:00 a.m. If no request is received by March 1, 2002 the hearing will be canceled. Written comments may be directed to Dr. Daniel E. Lafontaine, Director, South Carolina Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, SC 29224-2406 not later than March 1, 2002.

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: State Poultry Inspection Regulations

Purpose: To modernize, clarify and update the existing regulations which govern the inspection of poultry products produced for intrastate commerce. These updated regulations are necessary to comply with the federal Poultry Products Inspection Act, which establishes the Federal-State Cooperative Inspection Program. This cooperative agreement requires that state regulations be "at least equal to" applicable federal regulations, in return for which the federal government furnishes 50% of the funds required to maintain the state program. These regulations will allow the state program to maintain compliance with the terms of the federal cooperative agreement.

Legal Authority: 1976 Code Section 47-4-30, 47-19-30 and 47-19-170

Plan for Implementation: The state poultry inspection program has been in existence for many years, implementation of these proposed regulations will clarify and update the existing regulations.

Text:

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

Document No. 2726
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Section 59-18-1100 (Supp. 2000)

R43-302. School Incentive Reward Program

Preamble:

The State Board of Education proposes amending Regulation 43-302, School Incentive Reward Program. This regulation provides for a school level recognition program that is based on demonstrated student achievement. The proposed amendments to R43-302 include renaming the school recognition program, establishing the operation of the program by the State Department of Education, establishing the responsibility for the program criteria with the Division of Accountability of the Education Oversight Committee, and establishing appropriate expenditure of award funds.

Section-by-Section Discussion

43-302, Section A Establishes the Palmetto Gold and Silver Awards Program to recognize and reward schools for academic achievement. The program is to be operated by the State Department of Education with program criteria established by the Division of Accountability of the Education Oversight Committee.

43-302, Section B Provides direction as to the appropriate expenditure of funds and for an accounting of expenditures.

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 at a public hearing on the proposed regulation to be conducted by the State Board of Education on March 12, 2002, at 10:00 A.M. in the basement conference room of the Rutledge Building, 1429 Senate Street, Columbia, S.C. Persons desiring to make oral comments at the hearing are asked to provide copies of their presentation for the record.

Interested persons are also provided an opportunity to submit comments on the proposed amendments by writing to Dr. Nancy Sargent, Director, Office of School Quality, 1429 Senate Street, Room 702, Columbia, SC 29201. Comments can also be emailed to nsargent@sde.state.sc.us. Comments must be received no later than 5:00 P.M. on February 25, 2002. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing on March 12, 2002, as noticed above. Comments received by the deadline shall be submitted to the Board in a summary of public comments and department responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

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

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Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: R43-302, School Incentive Reward Program

Purpose: Regulation 43-302, School Incentive Reward Program, is being amended. The proposed amendments will redefine the school recognition program as the Palmetto Gold and Silver Awards Program, as required by the Education Accountability Act of 1998, Section 59-18-1100.

Legal Authority: S.C. Code Ann. Section 59-18-1100 (Supp. 2000).

Plans for Implementation: The Palmetto Gold and Silver Awards Program will take effect upon approval by the General Assembly and publication in the *State Register*. The program will be implemented by providing the regulated community with copies of the regulation.

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

The proposed amendments are in accord with the 1998 General Assembly repeal of Section 59-18-10, Incentive grant program for schools and school districts for exceptional or improved performance, and the creation of the Palmetto Gold and Silver Awards Program as required by the Education Accountability Act of 1998.

DETERMINATION OF COSTS AND BENEFITS: N/A

UNCERTAINTIES OF ESTIMATES: N/A

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

There will be no detrimental effects on the environment and public health if these changes are not implemented.

Text:

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

Document No. 2718

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 44-7-110 et seq.

R. 61-15. Certification of Need for Health Facilities and Services

Preamble:

The department proposes to amend Regulation 61-15 to: (1) Increase the current Certificate of Need monetary review thresholds as recommended by the SC Health Planning Committee and (2) correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format. See discussion below and Statement of Reasonableness herein. A Notice of Drafting for this proposed amendment was published in the *State Register* on October 26, 2001.

Discussion of Proposed Revisions:

(1) Increase the current Certificate of Need monetary review thresholds as recommended by the SC Health Planning Committee.

SECTION	CHANGE
61-15.102.1.c	The monetary review threshold for a capital expenditure by or on behalf of a health care facility which requires Certificate of Need approval is increased from \$1,000,000 to \$2,000,000.
61-15.102.1.e	The monetary review threshold for the annual operating cost of a new service by a health care facility which requires Certificate of Need approval if no capital expenditure is made for the service is increased from \$400,000 to \$1,000,000.
61-15.102.1.f	The monetary review threshold for an expenditure for the acquisition of medical equipment to be used for diagnosis or treatment by any person is increased from \$600,000 to \$1,000,000.

(2) Correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format.

SECTION	CHANGE
61-15.202.b (8)(f)	The item should request the name and mailing address of all persons and/or legal entities claiming “liabilities” of the licensee or of the facility or service requested rather than “an ownership interest.” (The term “ownership interest” is used in a prior item in the Regulation and is incorrectly repeated in this item.)

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invites members of the public and regulated community to attend a staff-conducted informational forum to be held February 25, 2002, at 2:00 p.m. in the Second Floor Conference Room of The Heritage Building, 1777 St. Julian Place, Columbia, SC. The purpose of the forum is to answer questions, clarify issues and receive comments from interested persons on the proposed amendment of R.61-15. Comments received shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for public hearing scheduled for March 14, 2002, as noticed below.

Interested persons are provided an opportunity to submit written comments on the proposed amendment to the staff forum by writing to Joel C. Grice at the Bureau of Health Facilities and Services Development, SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; Fax (803) 545-4579. Written comments must be received no later than 5:00pm on February 25, 2002. Comments received by the deadline requested shall be submitted below in a Summary of Public Comments and Department Responses for the board’s consideration at the public hearing, as noticed below.

Copies of the text of the proposed amendment for public notice and comment may be obtained by contacting Joel C. Grice at the Bureau of Health Facilities and Services Development, SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; Telephone number (803) 545-4200; Fax (803) 545-4579.

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

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Interested members of the public and regulated community are invited to make written or oral comments on the proposed amendment of R. 61-15 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on March 14, 2002. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, SC. The board meeting commences at 10:00 am at which time the board will consider items in the order presented on its agenda. The agenda is published by the department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed amendment of R.61-15 by writing to Joel C. Grice at the Bureau of Health Facilities and Services Development, SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; Fax (803) 545-4579. Written comments must be received no later 5:00pm on February 25, 2002. Comments received by the deadline date shall be considered by staff in formulating the final proposed regulation for public hearing on March 14, 2002, as noticed above. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the board's consideration at the public hearing noticed above.

Copies of the proposed regulation for public hearing before the DHEC Board may be obtained by contacting Joel C. Grice at the Bureau of Health Facilities and Services Development, SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; Telephone number (803) 545-4200; Fax (803) 545-4579.

Preliminary Fiscal Impact:

There will be minimal cost to the State and its political subdivisions. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

The Statement of Need and Reasonableness was determined by staff analysis pursuant to SC Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-15, Certification of Need for Health Facilities and Services

Purpose of Regulation Amendment: This amendment will (1) increase the current Certificate of Need monetary review thresholds as recommended by the SC Health Planning Committee and (2) correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format.

Legal Authority: SC Code Section 44-7-110 et seq.

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61-15 upon approval of the S.C. Board of Health and Environmental Control, the General Assembly, and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION AMENDMENT BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: On June 14, 2001, the Chairman of the SC Health Planning Committee recommended that the SC Board of Health and Environmental Control consider directing its staff to amend R.61-15 so as to increase the current Certificate of Need monetary review thresholds, which have been utilized since June 23, 1989. The recommendation was based on the fact that there has been substantial inflation in health care building, equipment, and operational costs during the last decade.

As a result of an analysis conducted by the Certificate of Need staff at the Department of Health and Environmental Control regarding historical and projected hospital inflation information, more appropriate monetary review thresholds are proposed, which will allow flexibility for inflation during future years and are comparable to Certificate of Need monetary review thresholds of several adjacent states.

In addition, a typographical error contained in the current R.61-15 regarding ownership disclosure information to be submitted by Certificate of Need applicants is proposed to be corrected.

DETERMINATION OF COSTS AND BENEFITS: There will be no cost to the State, its political subdivisions, and to the regulated community with the implementation of the proposed amendment.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no effect on the environment. The amendments will promote public health by making some new health care construction, equipment, and services more readily accessible without the need for Certificate of Need review and approval.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED: There will be no adverse effect on the environment if the amendments are not implemented. However, there will be an adverse effect on health care providers in completing relatively minor construction programs, purchasing medical equipment, and establishing new health services with costs below the proposed monetary thresholds in that a Certificate of Need must be obtained which will require an average of four (4) months time before the project may be developed.

Text of Proposed Amendment for Public Comment:

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

Document No. 2720

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

Statutory Authority: 1976 Code Sections 44-1-110, 44-1-140 and 44-29-10 et seq.

R. 61-20. Communicable Diseases

Preamble:

The department proposes to amend R.61-20 by removing scientifically obsolete concepts and updating language throughout as needed for the integration of new scientific concepts for control of communicable diseases, especially those that are unusual in their nature or occurrence, or that require immediate public health intervention. The amendment will update language to clarify, strengthen, improve and codify standards and terminology to be consistent with national standards. See Discussion below and Statement of Need and Reasonableness herein.

A Notice of Drafting for this proposed amendment was published in the State Register on October 26, 2001. Legislative review will be required.

Discussion of Proposed Revisions:

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SECTION: EXPLANATION OF CHANGE:

The statutory authority in the text of the regulation will be updated.

- Section 1 The words “Contagious or infectious” will be deleted, and the word “conditions” will be added to bring the wording in line with other sections that specify reporting of infectious and other diseases and conditions. Our modifications change the date when changes in the list of reportable diseases must be specified each year, and enlarges the requirement of who must report such diseases, and how quickly. It defines more specifically what are “contagious diseases.”
- Section 2 This section is deleted. This section was reserved and is no longer necessary.
- Section 3 Changes will remove wording forbidding articles of clothing, etc., to be removed from a house with a quarantinable disease. DHEC retains its authority to make decisions on what is necessary to investigate and quarantine.
- Section 5 Delete Section 5 - This section was reserved and is no longer necessary.
- Section 6 In Section 6, language is updated and clarified.
- Section 7 In Section 7, this drafting modifies and specifies more clearly the standard medical documents from which the methods of control of communicable and other preventable diseases are usually taken, and requires health providers to contact DHEC when specific recommendations are needed in this area.
- Section 8 Delete Section 8 - This section was reserved and is no longer necessary.
- Section 10 Section 10 language is clarified to coordinate with other existing statutes.
- Section 11 Section 11 defines authorized health officers more clearly than before.
- Section 14 Delete Section 14 - This section was reserved and is no longer necessary.
- Section 15 Section 15 requires DHEC to publish an “Official School and Child Care Exclusion List of Contagious or Communicable Diseases” and modify it annually as needed. This is in response to frequent requests from health care and school providers for such recommendations from DHEC.
- Section 16 Section 16 is being deleted because the information is covered by other Regulations.
- Section 17 Section 17 is modified to change “quarantinable” to “excludable”, and the section is re-worded to bring it current and explain in more detail the criteria for exclusion. It further specifies that DHEC shall publish an “Official School and Child Care Contact Exclusion List of Contagious or Communicable Diseases” each year. This latter is in response to frequent requests from health care and child care providers for such guidance from DHEC.
- Sections 18 & 19 Delete Sections 18 and 19 - No text appears at these sections and sections are no longer needed.
- Section 22 In Section 22, the heading is modified to make it easier to understand.

Sections 20, 21, & 23 Sections 20, 21, 22, and 23 are being amended to add the words “or state” pertaining ,
to health authority.

After the sections described above are deleted, sections in the regulation will be renumbered stylistically in numerical order.

Notice of Staff Informational Forum:

The staff of the Department of Health and Environmental Control invites interested members of the public and regulated community to attend a Staff Informational Forum on February 5, 2002, in the Peoples Auditorium, Third Floor of the Sims-Aycock Complex at SCDHEC, 2600 Bull Street, Columbia, South Carolina at 2:00 pm. Persons attending should enter the front entrance facing Bull Street. The purpose of this forum is to receive comments from interested persons on the proposed regulation. Comments received shall be considered by the staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for Public Hearing scheduled pursuant to S.C. Code 1-23-111, as noticed below.

Interested persons are also provided an opportunity to submit written comments to the forum by writing to Dr. James J. Gibson, State Epidemiologist, Bureau of Disease Control, DHEC, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments for the forum and comment period must be received no later than February 5, 2002 by 2:00 pm. Copies of the proposed regulation for public notice and comment may be obtained by contacting Dr. Gibson at the above address.

Oral and written comments received during the forum comment period shall be considered by the staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for Public Hearing on March 14, 2002, as noticed below.

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled board meeting on March 14, 2002. The public hearing will be held in the Board Room of the Commissioner’s Suite, Third Floor, of the Sims-Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. Persons attending should enter the front entrance facing Bull Street. 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 agenda is published by the department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentations for the record.

Interested persons may also submit written comments during the public comment period by writing to Dr. James J. Gibson, State Epidemiologist, Bureau of Disease Control, DHEC, 2600 Bull St., Columbia, S.C. 29201: Telephone number (803) 898-0861; Fax number (803) 898-0897. To be considered, written comments must be received before 4:00 p.m. on February 25, 2002. Staff in formulating the final proposed regulation for public hearing on March 14, 2002, as noticed above shall consider comments received by the deadline date. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the board’s consideration at the public hearing.

Copies of the final proposed regulation for consideration at the Public Hearing before the DHEC board may be obtained by contacting Dr. James J. Gibson at the above address.

Preliminary Fiscal Impact Statement:

New costs to the regulated community will be minimal and in fact may be reduced by some of the

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deleted actions in the regulation.

Statement of Need and Reasonableness:

The statement of need and reasonableness of the regulation was determined based on staff analysis pursuant to S.C. Code Sections 44-1-110, 44-1-140 and 44-29-10 et seq.

DESCRIPTION OF REGULATION: Proposed revisions to Regulation 61-20, Communicable Diseases.

Purpose: To update language to clarify, strengthen, improve and codify standards and terminology to be consistent with national standards.

Legal Authority: Sections 44-1-110, 44-1-140 and 44-29-10 et seq.

Plan for Implementation: The proposed amendment will take effect upon publication in the *State Register* following approval by the Board of Health and Environmental Control and the South Carolina General Assembly. The proposed amendment will be implemented by providing the regulated community with copies of the regulation. Additionally, the amendment will be published in the DHEC Epi-Notes, as will also the annual update of the "Official Exclusion Lists for Communicable Diseases." The medical community will be further informed through presentations at professional meetings. The general public may access the regulations on the DHEC web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: The revisions to the regulation are needed and reasonable because they will update state public health policies and practices according to the most recent medical knowledge on controlling communicable diseases.

The revisions are needed and reasonable because they promote use of national public health standards thereby reducing the likelihood of increases in communicable diseases because of ineffective disease prevention methods.

DETERMINATION OF COSTS AND BENEFITS:

See Preliminary Fiscal Impact Statement above for cost to the state and its political subdivisions. There will be very minimal costs to the regulated community. New costs to the regulated community will be minimal and in fact may be reduced by some of the deleted actions in the amended regulation.

UNCERTAINTIES OF ESTIMATES: None

EFFECTS ON ENVIRONMENT AND PUBLIC HEALTH:

There will no effect on the environment.

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

There will be an adverse effect on the public health if the revision is not implemented, since the implementation of uniform, comprehensive standards based on up-to-date knowledge and practice would not be realized, thus denying the public those protections, thereby increasing the potential for occurrence of unnecessary cases of communicable diseases or outbreaks of such diseases. In addition, failure to implement will deny DHEC's compliance with its statutory mandate to protect the public's health as effectively as possible.

Proposed Text for Public Notice and Comment:

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

Document No. 2719

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Statutory Authority: 1976 Code Sections 44-63-10

R.61-19, Vital Statistics

Preamble:

The Department is proposing to substantially amend Regulation 61-19, Vital Statistics. This regulation is being updated to ensure that birth, death, and fetal death data captured is in compliance with the new standard model adopted by the National Center for Health Statistics (NCHS) for implementation January 2004.

NCHS is the federal government's principal vital and health statistics agency. NCHS provides a wide variety of data with which the health of our Nation is monitored. NCHS data systems include data on vital events as well as information on health status, lifestyle and exposure to unhealthy influences, etc. This data is used by policymakers in Congress and the Administration, by medical researchers, and by others in the health community.

The philosophy of the standard certificates/reports being implemented in January 2004, was based on an electronic process to register vital events, not to design a word processing package to complete a paper document. Revised vital record software packages are being structured to interface with hospital patient record packages, funeral director packages, etc. A major emphasis of the 2004 revision is to improve quality. A system will not just capture a response; the system will capture quality information. Therefore, it is imperative for the State of South Carolina to revise regulation to ensure that our State collects its vital event data on the new standard model beginning January 01, 2004.

A Notice of Drafting for the proposed amendment was published in the State Register on November 23, 2001.

Discussion of Proposed Revisions:

SECTION CITATION EXPLANATION OF CHANGE

Section 1 Definitions as Used in These Regulations:

The following definitions are revised:

Vital Statistics, System of Vital Statistics, Vital Records, File, Live Birth, Fetal Death, Induced Termination of Pregnancy, Final Disposition, Physician, and Institution. Revising these definitions is recommended to clarify language for source providers to ensure proper registration.

(Section 1 continued)

The following new definitions are added:

Filing, Date of and Vital Reports. The addition of these definitions is to differentiate between certificates and reports filed with the Division and to define the date of registration.

Definitions will be reorganized in alphabetical order.

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Section 2 Duties of State Registrar of Vital Statistics:

Section 2.a.2 is revised to clarify ownership of the records housed in the Division of Vital Records.

Section 2.a.3 is revised to provide the State Registrar with the authority to designate the location of registration of vital events.

Section 2.a.4 is revised to provide the State Registrar with the authority to designate the method of registration of vital events.

Section 2.a.5 is revised to incorporate the proper name of our Agency.

Sections 2.a.6, 7 & 8 are added to address additional guidance for the State Registrar relative to vital event data.

Section 2.b is revised to provide authority to designated positions for vital event registration and to make stylistic language changes of gender.

Section 3 Duties of County Registrar:

Section 3.a is revised for stylistic language changes of gender.

Section 3.a.3 is revised to allow for the State Registrar to designate the time and method of vital event registration.

Section 3.a.4 is revised for stylistic language changes of gender.

Section 3.b is revised for stylistic language changes of gender and to make statement imperative.

Section 3.d is deleted because 3.e provides same instruction.

Section 3.e is revised to allow for non-specificity of title for the person entering the date of filing on certificates/reports. Section 3.e. will be renumbered to Section 3.d.

Sections 3.a.1, 3.a.2, 3.a.5, 3.a.6, and 3.c remain the same

Section 4 Content of Certificates and Reports:

Sections 4.a. and b are revised to incorporate the correct name of our Agency as well as to clarify language.

Section 4.c is added to provide documentation as to the methods of registration.

Section 5 Forms Property of South Carolina Department of Health and Environmental Control:

Section 5 is revised to clarify ownership of registration forms as well as the method of registration. The section title is revised to incorporate the correct title of our agency.

Section 6 Preparation of Certificates:

Section 6.a is revised to incorporate emerging technology in methods of registration.

Section 6.a.3 is revised to allowed both written and/or electronic signatures.

Sub-items 6.a.1, 2, 4, 5, 6, 7, 8 and 9 remain the same.

Section 7 Cancellation of Fraudulent Records:

Sections 7.a and b are revised for stylistic language changes of gender.

Section 8 Birth Registration:

Sections 8.a, 8.b, 8.c, 8.e, and 8.h are revised to clarify filing requirements for birth registration.

Sections 8.d, 8.f and 8.g remain the same.

Section 9 Infants of Unknown Parentage – Foundling Registration:

Sections 9.a, 9.a.4, 9.d, 9.e, are revised for stylistic language changes of gender and for wording clarification.

Sections 9.a.1, 2, 3, 5, 9.b, and 9.c remain the same.

Section 10 Delayed Registration of Birth:

Sections 10.a, b, c, and d are revised for stylistic language changes of gender.

Section 10.e is added to deter the filing of fraudulent birth certificates.

Section 11 Facts to be Established by Documentary Evidence for a Delayed Registration of Birth:

Section 11.d is revised for correction of punctuation.

Sections 11.a, 11.b, 11.c remain the same.

Section 13 Documentary Evidence – Acceptability:

Section 13 is revised to increase the age of documents acceptable for establishing a delayed certificate of birth.

Section 14 Abstraction and Certification by the State Registrar of Vital Statistics:

Sections 14.a, 14.b and 14.b.2 are revised for stylistic language changes of gender.

Sections a.1, a.2, a.3, a.4, b.1, and b.3 remain the same.

Section 16 New Certificates of Birth Following Adoption, Legitimation, Court Decree of Paternity, or Paternity Acknowledgment:

Section 16.c is revised for stylistic language changes of gender.

Sections 16.1, 16.a.1, 16.a.2, 16.a.3, 16.a.4, 16.b, 16.b.1, 16.b.2, 16.b.3, 16.b.4, 16.b.5, 16.d, 16.e and 16.f remain the same.

Section 18 Death Registration:

Sections 18.a, 18.a.2, 18.b, 18.c, 18.d, 18.e, 18.f, 18.g are revised for stylistic language changes of gender.

Section 18.a.1 remains the same.

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Section 19 Delayed Registration of Death:

Sections 19.a.1 and 19.a.2 are revised for stylistic language changes of gender.

Introductory statement remains the same.

Section 20 Institution May Assist in Preparation of Certificate:

Section 20.a is revised for stylistic language changes of gender

Sections 20.a.1 and 20.a.2 remain the same.

Section 21 Reports of Fetal Death:

Sections 21.a.1 and 21.a.3 are revised for stylistic language changes of gender and to allow the State Registrar to determine the method of registration.

Sections 21.a, 21.a.2, 21.a.4, b, c, and d remain the same.

Section 22 Reports of Induced Termination of Pregnancy:

Section 22.a is revised for stylistic language changes of gender.

Section 22.b remains the same.

Section 23 Permits Governing the Disposal or Transportation of Dead Human Bodies:

Section 23.b is revised for stylistic language changes of gender.

Sections 23.a, 23.c, 23.d, 23.e, 23.f remain the same.

Section 25 Removal of Body:

Sections 25.a.1 and 25.a.2 are revised for stylistic language changes of gender.

Introductory statement remains the same.

Section 26 Incomplete Certificates:

Sections 26.a and 26.b are revised to allow State Registrar to determine the method of registration.

Section 30 Correction of Minor Errors on Birth and Death Certificates During First Year:

Section 30 is revised for stylistic language changes of gender.

Section 32 Addition of Given Names after Registration:

Sections 32.a and 32.b are revised for stylistic language changes of gender.

Sections 32.a.1, 32.a.2, 32.a.3, 32.a.4, and 32.a.5 remain the same.

Section 33 Medical Items:

Section 33 is revised to allow State Registrar to determine the method of transmission.

Section 35 Evaluation of Evidence:

Section 35 is revised for stylistic language changes of gender.

Section 37 Legal Changes:

Section 37.a is revised for stylistic language changes of gender.

Sections 37.a.1, 37.a.2, 37.a.3, 37.a.4, 37.b, and 37.c remain the same.

Section 38 Preservation of Records:

Section 38 is revised for stylistic language changes of gender.

Section 39 Disclosure of Records:

Section 39.a is revised for stylistic language changes of gender.

Section 39.f is added – original site was Section 40.c.

Sections 39.b, 39.c, 39.d, and 39.e remain the same.

Section 40 Certified Copies:

Sections 40.b is revised for stylistic language changes of gender.

Section 40.c is deleted – added as Section 39.f.

Section 40.a remains the same.

Section 41 Persons Required to Keep Records:

Sections 41.c and 41.d are revised for stylistic language changes of gender.

Sections 41.a and 41.b remain the same.

Section 42 Duties to Furnish Information Relative to Vital Events:

Section 42 is revised for stylistic language changes of gender.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invites interested members of the public to attend a staff-conducted informational forum to be held on February 12, 2002, at 2:30 p.m., in the Peoples Auditorium, DHEC, 2600 Bull Street, Columbia, S.C. The purpose of the forum is to answer questions, clarify issues, and receive comments of interested persons on the proposed amendment of Regulation 61-19.

Interested persons are also provided an opportunity to submit written comments to the staff forum on the proposed amendments by writing to Jo Ann S. Gooding, Director, Division of Vital Registry, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be

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received by 4:00 p.m. on February 12, 2002, to be considered by staff in formulating the final proposed regulation for submission to the Board of Health and Environmental Control for public hearing as noticed below. Comments received shall be submitted to the board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental control at its regularly-scheduled meeting on March 14, 2002, to be held in the Board Room of the Commissioner's Suite, third floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. The board meeting commences at 10:00 a.m. at which time the board will consider items on its agenda in the order presented. The Board's agenda will be published by the department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record.

Interested persons may also submit written comments on the proposed amendment by writing to Jo Ann S. Gooding, Director, Division of Vital Registry, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be received no later than 4:00 p.m. on February 25, 2002. Comments received shall be considered in formulating the final proposed amendment of Regulation 61-19 for submission to the board for public hearing as noticed above. Comments received shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions as a result of the proposed changes to this regulation. The Division of Vital Records receives no state appropriations and has operated solely from the funding received through the certification of vital events and the provision of related data.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:

Purpose: The Department proposes to substantially amend Regulation 61-19, Vital Statistics. This Regulation is being updated to ensure that birth, death, and fetal death data captured is in compliance with the new standard models adopted by the National Center for Health Statistics (NCHS) for implementation January 01, 2004.

Statutory Authority: The legal authority for the regulation is S.C. Code Section 44-63-10 *et seq.*, 1976 Code of Laws and Supplement.

Plan of Implementation: Upon approval by the Board of Health and Environmental Control, the General Assembly and publication as a final regulation in the State Register, this amendment to Regulation 61-19, will be implemented as are other regulations.

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

In order to stay comparable with other state systems and to ensure a viable system of vital records in the electronic age, the Division of Vital Records needs to amend current regulation governing the registration and certification system of births, deaths, fetal deaths, marriages, divorces and annulments, and induced terminations of pregnancy. The current regulation was adopted by the DHEC Board on September 13, 1977, with subsequent amendments approved on May 22, 1981, June 23, 1989, and July 01, 1998. Today, virtually all vital events are prepared on paper forms, signed and then filed with vital records offices. Most states provide electronic birth certificate systems for key-entry at hospitals and birth centers, but the result is generally a paper certificate plus an electronic file. All death and fetal death certificates are currently filed on paper. In the near future, certificates will be largely “paperless”, with the data submitted electronically, and certified copies of records printed only when necessary. This will result in higher quality of data and less reliance on a labor-intensive system. The vital registration and statistical system of the United States exemplifies cooperation between federal and state government at its best. Even though the legal responsibility for the registration of vital events rests with the individual states, the States and the National Center for Health Statistics (federal partner) work together to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, state, and national levels. The cooperation includes the development and promotion of standard certificates and reporting forms, training and quality control programs, and model legislation.

The 1992 Model State Vital Statistics Act and Regulation is the fifth revision. The Model Act and Regulation provides detailed guidance to State Registrars of vital statistics. The Model Act and Regulations serve to promote uniformity among States in definitions, registration practices, disclosure and issuance procedures, and in many other functions that comprise a State system of vital statistics.

Once approximately every ten years, the National Center for Health Statistics (NCHS) adopts a new standard model of certain certificates. NCHS, once they adopt the model, forwards the model to the states for their review and adoption for their respective states. The philosophy of the standard certificates/reports to be implemented January 2004 is based on an electronic process to register vital events, not to design a word processing package to complete a paper document. A major goal of the 2004 revision is to easily incorporate technological advances, such as the use of electronic signatures, in records and information management.

In order to stay comparable with other state systems and to ensure a viable system of vital records in the electronic age, it is necessary for the Division of Vital Records to amend Regulation 61-19 governing the registration and certification system of births, deaths, fetal deaths, marriages, divorces and annulments, and induced terminations of pregnancy. Without clarifying language throughout Regulation 61-19, the Division of Vital Records will not have the authority to move forward with modifications to ensure compliance with the federal requirements for capturing vital event data for South Carolina. The proposed changes will bring Regulation 61-19 in-line with the 1992 Model State Vital Statistics Act and Regulation from the Center for Disease Control and Prevention/NCHS.

DETERMINATION OF COSTS AND BENEFITS: There will be no increased costs to the state, its political subdivisions, or to the regulated community as a result of the changes on these regulations. The Division of Vital Records receives no state appropriations and operates solely from the sale of vital events and data.

EFFECTS ON ENVIRONMENT AND PUBLIC HEALTH: The proposed amendment to the regulation is intended to ensure the uninterrupted documentation and timely dissemination of vital records, to maintain the current level of customer service, to preserve the integrity of the vital records program, and to support required state and federal initiatives. Failure to approve the proposed amendments to Regulation 61-19 will result in a decrease in overall operation and level of services and may place the Department in violation of law and/or contractual agreements.

DETRIMENTAL EFFECT ON ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: If Regulation 61-19, Vital Statistics is not amended to be in compliance with Model State

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Vital Statistics and Regulation (NCHS), the Division of Vital Records will not be able to make use of emerging technology that will continue to impact the vital statistics system of South Carolina and the failure to be in compliance with the 1992 Model will seriously jeopardize our ability to meet deadlines necessary to conform to federal contracts and mandated state and federal initiatives. Resources are already being strained to maximum levels to meet federal demands for data to be transmitted in a quicker time frame. Funds provided by these contracts will be affected if we cannot continue to comply. Our vital records program will become stagnant if authority is not established to keep South Carolina in the mainstream.

Text of Proposed Amendment for Public Comment:

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

Document No. 2721

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

Regulation 61-62.5, Standard Number 3, Waste Combustion and Reduction

Preamble:

Pursuant to SC Code Section 48-1-10 *et seq.*, the South Carolina Department of Health and Environmental Control (Department) proposes to amend the Air Pollution Control Regulations and Standards, R.61-62.5, Standard Number 3, Waste Combustion and Reduction, to establish consistent emission limits for industrial and utility boilers which burn coal in addition to waste fuel. The Department also proposes to clarify the exemption for total reduced sulfur control devices that burn other waste fuels, to allow ash storage at air curtain incinerators in a manner consistent with R.61-107.12, Solid Waste Management. The department also proposes to add an exemption for renewable energy resources. Finally, the department proposes to amend the periodic testing section to ensure that compliance testing continues to be conducted every three years.

Two Notices of Drafting to amend the regulation were published in the *State Register* on July 28, 2000, and April 27, 2001.

Discussion of Proposed Revisions:

<u>SECTION CITATION</u>	<u>EXPLANATION OF CHANGE</u>
Section I.B	Delete sentence for clarification.
Section I.B	Update reference to 40 CFR 60, Subpart Cb.
Section I.D and I.E	Update reference to Standard 3.1 to reflect change in title.
Section I.J	Clarify current exemption for total reduced sulfur devices.
Section I.J	Add exemption for renewable energy resources.
Section III.E.4, Table 1	Correct typographical error.
Section III.F.2.b	Update reference to Standard 7.
Section III.F.4	Update reference to 40 CFR 266.
Section III.F.5.b	Update reference to Standard 7.
Section III.G.4.h	Amend language to allow ash storage at these facilities in order to be consistent with R.61-107.12, Solid Waste Management.
Section III.I.2 and 3, Section III.J.6.c, Section III.L.5.c Tables IV and V	Change “lbs/MM BTU” to “lbs/10 ⁶ BTU” for consistency with EPA documents.
Section III.J.1, Table III	Add requirements of Option 3 of the Guidance published on June 25, 1999 regarding industrial and utility boilers which burn coal in addition to waste.
Section III.J.1, Table III	Correct publishing error in footnote. Add Concern 2 of the Guidance published on June 25, 1999.
Section III.J.6.c, Section III.L.5.c Tables IV and V	Clarify “Waste Firing Rate”.
Section VII.A	Delete extraneous brackets.
Section VII.B.1.a and b	Update wording to reflect changes in technology.
Section VII.B.4.b, 5.b and 6.b	Change citation to correct a prior publishing error.
Section VIII.B	Change the frequency of testing requirement to reflect changes in the Hazardous Waste Maximum Achievable Control Technologies (HW MACT) standards. Specifically, those facilities subject to the HW MACT will be required to

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continue stack testing every three years to prevent the possible deterioration of the ambient air quality.

Section VIII.F Change the configuration of formula to correct a typographical error only; the content and meaning of formula remains the same.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public to attend a staff-conducted informational forum to be held on February 25, 2002, at 10:00 a.m. in room 2380 at the Department of Health and Environmental Control at 2600 Bull Street, Columbia, SC. The purpose of the forum is to receive comments from interested persons on the proposed regulation.

Interested persons are also provided an opportunity to submit written comments to Julie Seel 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 February 25, 2002. Comments received shall be submitted to the board in a Summary of Public Comments and Department Responses.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Julie Seel at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-3256.

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

Interested members of the public and regulated community are invited to comment on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on March 14, 2002. The public hearing is to be held in room 3420 Board Room of the Commissioner's Suite, third floor, Aycock Building of the 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 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 the record.

Interested persons are also provided an opportunity to submit comments on the proposed amendments to Julie Seel at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-3256. To be considered, comments must be received no later than 5:00 p.m. on February 25, 2002. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing on March 14, 2002, as noticed above. Comments received shall be submitted to the board in a Summary of Public comments and Department Responses.

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: Amendment to R.61-62.5, Standard Number 3, Waste Combustion and Reduction.

Purpose: The department proposes to amend the Air Pollution Control Regulations and Standards, R.61-62.5, Standard Number 3, to provide consistent emission limits for industrial and utility boilers that burn coal in

addition to other waste fuels. The department also intends to clarify the exemption for total reduced sulfur devices that burn other waste fuels and to allow for ash storage at air curtain incinerators in a manner consistent with R.61-107.12, Solid Waste Management. The department also proposes to add an exemption for renewable energy resources. Finally, the department proposes to amend the periodic testing section to ensure that compliance testing continues to be conducted every three years.

Legal Authority: The legal authority for the Air Pollution Control Regulations and Standards, R.61-62.5, Standard Number 3, is section(s) 48-1-10 et seq., S.C. Code of Laws.

Plan for Implementation: The proposed amendments will take effect upon publication in the *State Register*.

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

On June 25, 1999, a revision to Regulation 61-62.5, Standard 3, Waste Combustion and Reduction, was published in the *State Register*. The department undertook this revision for the purpose of clarifying portions of the regulation, not to add new requirements or make the regulation any more stringent. However, as the regulation was in the final steps of being promulgated, several industry groups brought forward concerns about the interpretation of certain aspects of the regulation. Specifically, when the emission limitations for industrial and utility boilers were converted from lb/1000 gallons of liquid waste or waste fuel being burned to lb/10⁶ BTU total heat input, some facilities that burned coal in addition to waste fuel found that the metals inherent to coal would possibly preclude them from meeting the emission limitations if the unit also combusted waste. To resolve this issue, the department published a Notice of General Public Interest in the *State Register* on June 25, 1999 (Guidance Document). The guidance document established three options for determining emission limitations for industrial and utility boilers that burn coal and waste and stated that these options would be available to facilities until such time as the department revised the regulation.

Thus, this current revision is necessary in order to incorporate one of the options from the guidance document as stated above and to clarify the emission limits for industrial and utility boilers. The department has selected Option 3, which should not impose any more stringent requirements on the regulated community. Option 3 was chosen by the department because it accommodates higher than expected emissions from facilities which choose to burn waste in addition to coal. This revision will also clarify the confusion concerning the requirements for ash storage at air curtain incinerators. These requirements are currently in conflict with other regulations, specifically Regulation 61-107.12, Solid Waste Management. In addition, the amendment is necessary in order to ensure that compliance testing continues to be conducted every three years. The current regulation allows facilities subject to the Resource Conservation and Recovery Act (RCRA) to test in accordance with the requirements specified in that regulation. However, new regulations will soon decrease that testing to every five years. Thus, this revision is necessary to ensure that the current testing schedule remains unchanged. The department also proposes to add an exemption for renewable energy resources. Finally, typographic errors and other discrepancies will be corrected. This will result in clearer more easily understood regulations.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions resulting from these amendments nor will there be any increased cost to the regulated community as a result of these amendments. In light of the fact that all industrial and utility boilers that burn waste and coal in South Carolina are already utilizing various control technologies to meet the emissions limitations contained the guidance published on June 25, 1999, incorporating Option 3 will not impose any additional financial burdens. In addition, the other proposed changes stated in this document should not increase the current costs to industry.

UNCERTAINTIES OF ESTIMATES:

None.

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EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed amendments to Regulation 61-62.5, Air Pollution Control Regulations and Standards, Standard Number 3, will provide continued protection of the environment and public health. The amendments will also benefit the regulated community by clarifying the regulations and increasing their ease of use.

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

Currently, the department offers three compliance options in a guidance document for facilities that burn waste in addition to coal. These options can be confusing for the regulated community and may present a unreasonable amount of ambiguity in the department's ability to enforce Standard 3. To eliminate this potential problem, the department intends to incorporate only one of those options into regulation which will cause only minimal effects on the regulated community. Also, ambient air quality may be detrimentally affected if these facilities are allowed to conduct their compliance testing every five years instead of every three years as is the current requirement. The latter more restrictive compliance testing allows the department and industry to detect increases in emissions faster and is therefore more protective of human health and the environment. The department also proposes to add an exemption for renewable energy resources which will promote energy recovery activities while concurrently protecting human health and the environment.

Text:

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

Document No. 2722

DEPARTMENT OF LABOR, LICENSING AND REGULATION

BOARD OF MEDICAL EXAMINERS

CHAPTER 81

Statutory Authority: 1976 Code Sections 40-1-40 and 40-47-20

Preamble:

The Board of Medical Examiners is proposing to add a new regulation to authorize physicians who are employed by athletic teams from other states, territories or jurisdictions, and who are actively licensed and in good standing in that jurisdiction, to practice medicine only upon team members, coaches and staff of the team by which the physician is employed. The team physicians shall not have practice privileges in any licensed health care facility, and shall not be authorized to issue orders, prescriptions or order testing at medical facilities in this state.

Section by Section Discussion:

Regulation 81-300. Team Physician

This new regulation will authorize athletic team physicians from other states and jurisdictions to provide limited medical care to the members, coaches, and staff of the team by which the physician is employed without being licensed in this state.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code, as amended, such hearing will be conducted at the Administrative Law Judge Division at 9:00 a.m. on Tuesday, March 12, 2002. Written comments may be directed to Mr. John D. Volmer, Administrator, Board of Medical Examiners, SC Department of Labor, Licensing and Regulation, Post Office Box 11289, Columbia, South Carolina 29211-1289 no later than 5:00 p.m., on Tuesday, February 26, 2002.

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This regulation is being proposed in order to authorize physicians who are employed by athletic teams from other states, territories or jurisdictions, and who are actively licensed and in good standing in that jurisdiction, to practice medicine only upon team members, coaches and staff of the team by which the physician is employed. The team physicians shall not have practice privileges in any licensed health care facility, and shall not be authorized to issue orders, prescriptions or order testing at medical facilities in this State.

Legal Authority: Statutory Authority: Sections 40-1-40 and 40-47-20

Plan for Implementation: Administratively, the department will see that these practices are implemented by informing the licensees and educational institutions through written communications and newsletters.

DETERMINATION OF NEED AND REASONABLENESS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: This regulation is necessary in order to permit athletic team physicians from other states, territories or jurisdictions, to provide limited medical care to the members, coaches and staff of the team by which the physician is employed without requiring the physician to be licensed in this state. In addition to restricting the physician's practice to the team members, coaches and staff, the regulation will impose strict limitations on the type of medical care the physician is authorized to administer and the settings in which the medical care may be administered.

DETERMINATION OF COSTS AND BENEFITS: THERE WILL BE NO ADDITIONAL COST INCURRED BY THE STATE OR ANY POLITICAL SUBDIVISION.

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

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: This regulation will have no effect on the environment and public health of this State.

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

Text:

81-300. Exemption for Team Physicians; Limited Practice Permitted.

- (1) A physician licensed in another state, territory, or other jurisdiction of the United States, or of any other nation or foreign jurisdiction is exempt from the requirements of licensure in this state, if the physician
 - (a) holds an active license to practice in the other jurisdiction;
 - (b) engages in the active practice of medicine in the other jurisdiction; and
 - (c) is employed or designated as the team physician by an athletic team visiting the state for a specific sporting event.

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(2) A physician's practice under this section is limited to the members, coaches and staff of the team by which the physician is employed or designated. A physician practicing in this state under the authority of this section shall not have practice privileges in any licensed health care facility, nor shall such physician be authorized to issue orders, prescriptions or order testing at medical facilities in this State.

Filed: January 10, 2002, 1:30 pm

Document No. 2725

COMMISSION ON HIGHER EDUCATION

CHAPTER 62

Statutory Authority: 1976 Code Section 59-111-75

62-200 South Carolina National Guard Student Loan Repayment Program

Emergency Situation:

The Commission on Higher Education found that an emergency exists requiring promulgation of a regulation pursuant to Section 59-111-75 (as signed into law on May 29, 2001) to immediately implement the South Carolina National Guard Student Loan Program. This program was transferred to the Commission on Higher Education from the Adjutant General's Office on July 1, 2001, and requires awards during Spring 2002.

Text:

62-200 Purpose of the South Carolina National Guard Student Loan Repayment Program (SLRP)

Pursuant to Act 41, the Commission on Higher Education, in consultation with the South Carolina Student Loan Corporation, shall develop a loan repayment program for providing incentives for enlisting or remaining for a specified time in both the South Carolina Army and Air National Guards (SCNG) in areas of critical need. The Commission on Higher Education must define areas of critical need annually in consultation with the Adjutant General. The Commission on Higher Education shall promulgate regulation to set forth the terms of the loan repayment program.

62-205 Funding

A. This program is dependent upon annual funding from the state of South Carolina until a recurring fund or principal account is established.

B. Of the funds appropriated by the General Assembly for the loan repayment program, these funds must be retained in a separate account and used on a revolving basis for purposes of the loan repayment program and its administration. The State Treasurer shall disburse funds from this account as requested by the Commission on Higher Education and upon warrant of the Comptroller General; provided, however, that no more than ten percent of the funds annually appropriated to the Commission on Higher Education may be used for the cost of administering the program. Funds in the account and earnings from it may be carried forward in succeeding fiscal years and used for the purposes of the loan repayment program.

62-210 Member Eligibility

A. Members must enlist, reenlist, accept a warrant or be commissioned with a term of service of at least 6 years. Members must have a remaining obligation of at least four years as members of the SCNG for SLRP benefits to initiate. SLRP benefits may not initiate until an eligible loan is at least one year old and the active member has completed one year of satisfactory service in the SCNG. Members must meet a specified area of critical need according to the Critical Needs List at the time of enlistment, reenlistment, warranting or commissioning.

B. Members must complete a South Carolina National Guard Student Loan Repayment Program Eligibility Form as part of the enlistment, re-enlistment, warrant or commission contract. The Adjutant General will make available eligibility forms to recruiting/retention officers. At the beginning of each month, the Commission on Higher Education will provide the Education Services Office with the available number of control numbers that

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their office may assign for each month. Recruiting/retention officers must obtain a control number from the Education Services Office before offering SLRP benefits to any member of the SCNG. At the end of each month, the Education Services Office shall provide the Commission on Higher Education with a list of all members who have been issued a control number for SLRP eligibility.

C. Members must submit a completed South Carolina National Guard Student Loan Repayment Program Annual Application each fiscal year in accordance with the "Annual Application" Section.

D. Members must certify that they are legal residents of South Carolina.

E. In order for student loan repayment to be processed, ARNG members must have completed basic training (BT), advanced individual training (AIT), and be Military Occupational Specialty (MOS) qualified. ANG members must be Air Force Specialty Code (AFSC) qualified.

F. Members must maintain satisfactory participation in a unit of the SCNG. Members must maintain a satisfactory record of performance of duty and attendance at unit assemblies and annual training. Failure to maintain MOS qualification, with a reasonable ability to become qualified in appropriate time, is not satisfactory participation (Grant of a commission within the SCNG will allow time for branch qualification by regulation). A file that becomes "flagged" in excess of six months for cause within the individual's control is unsatisfactory participation for purposes of this program.

62-215 Areas of Critical Need

A. Areas of critical need may include MOS/AFSC and units for the SCNG. The Commission on Higher Education in consultation with the Adjutant General will determine the MOS/AFSC and units that will be included on the Critical Needs List for the SCNG, which must be placed in priority order. The Adjutant General will provide the Critical Needs List to the Commission on Higher Education by no later than June 15 prior to the fiscal year awarding period and an update may be provided periodically as needed.

B. For fiscal year 2001-02 only, the 2000-01 applicants for the South Carolina National Guard Tuition Assistance Program who did not receive funding and who have an eligible student loan, will receive priority.

C. Exact list of critical needs are subject to change.

62-220 Annual Application

A. The Adjutant General will provide each eligible member with the South Carolina National Guard Student Loan Repayment Annual Application form at least sixty (60) days prior to the member's anniversary date. Applications will also be available at the Commission on Higher Education's website. Each member is responsible for ensuring that the SCNG has a current mailing address.

B. Completed application for each eligible loan must be submitted to the Commission on Higher Education each fiscal year within thirty days after the member's anniversary date. The accurate and timely submission of the application is the personal responsibility of the member. Payments will not be processed without a completed annual application.

C. Submission of a completed application does not guarantee student loan repayment. Repayment is subject to the availability of funding for the program.

D. As part of the application, each member is responsible for providing the name, address, and account number for each loan provider that is eligible for student loan repayment. The member authorizes release of financial data on each eligible loan to the Commission on Higher Education.

E. Any member who has attempted to obtain or obtained funds through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable military justice, civil or criminal penalties, including termination in the SLRP. If SLRP benefits are terminated under this paragraph, the member may not regain eligibility in the program.

F. The Adjutant General shall provide the Commission on Higher Education by the 15th of each month with a list of eligible members whose anniversary dates fall in the previous month. The list shall include at a minimum the following information: each eligible member's name, control number, social security number, whether he/she participates in the Federal SLRP. This list should only include the names of the member's that are eligible based on the fact that they have maintained satisfactory participation in the SCNG according to paragraph F under "Member Eligibility."

62-225 Disbursements

A. The SLRP provides for the repayment by the Commission on Higher Education of a designated amount for an eligible student loan(s).

B. An eligible student loan is a loan made, insured, or guaranteed under part B, part D, or part E of Title IV of the Higher Education Act of 1965. Failure to qualify for an eligible student loan precludes participation in the program. Any loans made to parents as PLUS loans are not eligible for SLRP benefits.

C. Eligible student loans must be at least one year old and must not be in default. Loans that fall into default will not be eligible for repayment. It is the member's responsibility to see that this does not occur by making arrangements for payment, deferment or forbearance with the loan provider on any loan(s), which payment is due.

D. On the anniversary date of each completed satisfactory year of service in the SCNG for a maximum of four years, the member may be eligible to receive student loan repayment based upon meeting the eligibility requirements of the program. Member must have a remaining obligation of at least four years as members of the SCNG for SLRP benefits to initiate. Loans may not be processed for payment prior to the member's anniversary date. The four years of eligibility are not required to be consecutive.

E. Benefits will be paid at the rate of no more than \$4,500 per year of satisfactory service in the SCNG, for a maximum total of four years and \$18,000. Disbursements will not exceed indebtedness. For example if a member has a loan that is not at least \$4,500, then the payment amount will not exceed the payoff for the loan.

F. The Commission on Higher Education may periodically adjust the amount of the award based upon inflation increases or other relevant factors.

G. Payments for members who have multiple loans will be divided equally among the loans if the payments do not exceed the indebtedness. Following are examples of members with multiple loans:

1. Member A has two eligible student loans. The first loan is for \$2,000 and the second loan is for \$4,000. The amount of annual eligibility is \$4,500 since this will not exceed the total indebtedness of \$6,000. The first loan will receive a payment of \$2,000 since that is the total amount owed and it does not exceed half of the annual eligibility. The second loan will receive a payment of \$2,500, the remaining benefit for the annual eligibility of \$4,500.

2. Member B has three eligible loans. The first loan is for \$4,200, the second loan is for \$4,500, and the third loan is for \$5,200. The amount of annual eligibility is \$4,500 since this will not exceed the total indebtedness of \$13,900. Each loan will receive an equal payment of \$1,500 since this will not exceed the indebtedness for each loan.

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H. The Commission on Higher Education will ensure that SLRP benefits for members who also participate in the Federal Student Loan Repayment Program will be coordinated so that any payment from the Federal Government must be applied first and then SLRP benefits will be applied to the outstanding balance of any eligible student loan(s) according the "Disbursement" Section.

I. Payments shall be made directly to the loan provider with the member listed as the beneficiary of the payment so that the student loan is paid for the benefit of that member.

J. Reimbursements will not be made for any payment(s) against the student loan that has been made by the member, another individual, or another agency.

62-230 Expiration of Eligibility to Participate

A. A member's eligibility to participate in the SLRP will expire on the earlier of the following dates:

1. Date on which four years of payment on loans are completed;
2. Date member reaches the end of enlistment contractual obligation unless reenlists in critical need area or completes obligation by commission/warrant;
3. Date separated or discharged from the SCNG; and/or
4. Date the member becomes an unsatisfactory participant in the SCNG. If a member regains satisfactory participation in the SCNG in subsequent years according to D of "Member Eligibility" Section, additional payments may be processed on the next anniversary date of satisfactory service.

62-235 Appeals

A. Members wishing to appeal any decision regarding satisfactory performance in the SCNG must submit a written request to the Adjutant General. The Adjutant General's decision on satisfactory performance appeals shall be final.

B. Members wishing to appeal any decision regarding student loan repayment must submit a written request to the Commission on Higher Education. The Commission on Higher Education's decision on student loan repayment appeals shall be final.

62-240 Program Oversight

A. The Commission on Higher Education in consultation with the Adjutant General will coordinate the oversight of functions (e.g., guidelines, policies, procedures, regulation) relative to this program. The Commission on Higher Education shall be responsible for the allocation of funds and promulgation of the regulation.

B. The Commission on Higher Education shall review the loan program annually and report to the General Assembly on its progress and results to ensure proper administration of the program.

Filed: January 7, 2002, 3:15 pm

Document No. 2717
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123

Statutory Authority: 1976 Code Sections 50-11-500, 50-11-520, 50-11-530 and 50-11-2200.

Emergency Situation:

This emergency regulation amends and supersedes South Carolina Department of Natural Resources Regulation 123-40. This regulation sets open and closed seasons, bag limits, and methods of taking wild turkey. Because the hunting season begins on March 15 in Game Zones 6 & 11, and on April 1 in all other Game Zones, it is necessary to file these regulations as emergency.

SUBARTICLE 3
OTHER BIG GAME

123-51. Turkey Hunting Rules and Seasons

1. Total season limit of 5 turkey statewide per person, 2 per day, gobblers only unless otherwise specified. Total statewide and county bag limits include turkeys harvested on Wildlife Management Areas (WMAs). Small unnamed WMAs in counties indicated are open for turkey hunting. Turkey seasons and limits are as follows:

Table with 4 columns: AREA, DATES, LIMIT, Other Restrictions. Rows include Game Zone 1 (Oconee, Pickens & Greenville counties), Game Zone 2 (Anderson, Abbeville, Laurens, Newberry, Greenwood, McCormick, Saluda & Edgefield counties), Game Zone 3 (Aiken, Lexington & Richland counties), Game Zone 4 (Cherokee, Chester, Fairfield, Lancaster, Spartanburg, Union & York counties), Game Zone 5 (Kershaw County, Chesterfield & Marlboro counties), and Game Zones 6 and 11 (March 15 - May 1).

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Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Hampton, Jasper & Orangeburg Counties.			
Game Zone 7	April 1 - May 1	2	
Dillon & Horry counties			
Game Zone 8	April 1 - May 1	2	
Sumter, Lee & Darlington counties			
Game Zone 9	April 1 - May 1	5	
Clarendon, Williamsburg & Georgetown counties			
Game Zone 10	April - May 1	2	
Florence & Marion counties			
WMA lands:			
Keowee WMA	April 1 - May 1	2	Shotguns only - north of Hwy 123 and west of the Keowee Arm of Lake Hartwell to Hwy 291 and west of Hwy 291. Archery Only on other sections.
Francis Marion Hunt Unit	April 1 - May 1	2	WMA Only
Sand Hills State Forest WMA	April 1 - May 1	2	Wed. - Sat. Only
Webb-Palachucola WMA's	April 1 - May 1	2	
Manchester State Forest WMA	April 1 - May 1	2	Wed. - Sat. Only
Moultrie Hunt Unit	April 1 - May 1	2	Wed. & Sat. Only
Bluefield WMA	April 1 - May 1	2	Adult/Youth Only
Hall WMA	April 1 - May 1	2	Archery Only
Santee Dam WMA	April 1 - May 1	2	Wed. & Sat. Only
Marsh Furniture WMA	April 1 - May 1	2	Wed. & Sat. Only
McBee WMA	April 1 - May 1	2	Wed. & Sat. Only
Hickory Top WMA	April 1 - May 1	1	Wed. & Sat. Only
Pee Dee Station Site WMA	April 1 - May 1	1	Wed. & Sat. Only
Great Pee Dee River WMA	April 1 - May 1	1	Wed. & Sat. Only
Tillman Sand Ridge WMA	April 1 - May 1	2	Fri. & Sat. Only
Lewis Ocean Bay HP	April 1 - May 1	1	Fri. & Sat. Only
Waccamaw River HP	April 1 - May 1	1	Fri. & Sat. Only
Bucksport WMA	April 1 - May 1	1	Fri. & Sat. Only
Cartwheel Bay HP	April 1 - May 1	1	Fri. & Sat. Only
Little Pee Dee River Complex	April 1 - May 1	1	Fri. & Sat. Only
Victoria Bluff WMA	April 1 - May 1	1	Fri. & Sat. Only

Crackerneck WMA

April 1 - May 1

5

Fri. & Sat. Only, Main gate opens at 4:30 am and closes at 1:00pm. Sign in and out at the gate required.

2. The following Regulations apply to all Wildlife Management Area lands. 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).
 - b. Shotguns, muzzleloader shotguns, 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.
 - e. It is unlawful to hunt turkeys on Sundays on Wildlife Management Area lands and on private lands within Game Zones 1, 2 and 4.

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Document No. 2609

STATE BUDGET AND CONTROL BOARD

CHAPTER 19

Statutory Authority: 1976 Code Sections 8-11-41, 8-11-230, 8-11-240, 8-11-680

19-700 – Office of Human Resources, State Human Resources Regulations

Synopsis:

Based on the Office of Human Resources' review of the State Human Resources Regulations and input from agency focus groups, several changes are proposed. First, the regulations were reorganized to follow the employment relationship from establishing positions and filling vacancies to separation from employment. Second, the text was simplified to make the regulations easier to read and understand, and changes were made to ensure compliance with recent statutory changes. Third, regulations for unclassified employees were added to reflect current practices. Below is a summary briefly describing the changes to each section.

Discussion of Proposed Revisions:

The following describes the substantive changes to the regulations.

19-701 GENERAL RULES

The State's commitment to equal employment opportunity is contained in this section, as is a reference to other applicable State and Federal laws (19-701.01). This section authorizes OHR to audit information pertaining to these regulations and to provide exceptions to the regulations (19-701.04). Other issues such as the Human Resources Information System, Ethics Act, employment outside of State government, solicitation and distribution, and the Pilot Programs provision from the S. C. Code of Laws are also detailed (19-701.05 – 19-701.09).

19-703 JOB VACANCY ANNOUNCEMENTS

One addition to this section states that the use of the HRIS vacancy posting system satisfies the vacancy posting requirements of Section 8-11-120 of the S. C. Code of Laws (19-703.02). The second adds information from the Freedom of Information Act concerning the release of materials relating to not fewer than the final three applicants in a search to fill an employment position (19-703.05).

19-704 MOVEMENT AND STATUS

This section details how classified and unclassified employees and positions are moved within State government and the status (i.e., probationary, trial, or covered) associated with such movement. The section addresses initial employment, promotions, demotions, reassignments, transfers, reclassifications, and unclassified state title changes for classified and unclassified positions. Also specified is how employees and positions may move between the classified and unclassified services. This section gives the agency the authority to count up to six months of continuous service in any temporary capacity towards the completion of a probationary period.

19-705 CLASSIFIED EMPLOYEE PAY PLAN

Additions to this section include the Higher Education exemption from the 95% rule, enacted in 1999 by the South Carolina General Assembly (19-705.01 C.), a section on Legislatively mandated pay increases, and compensation provisions for special assignments and market or geographic reasons (19-705.07 E. and F.). This regulation includes a prohibition on retroactive pay increases, as provided in the South Carolina Constitution (19-705.01 G.), and a regulation which specifies that the pay for unclassified employees moving to the classified service would be controlled by the classified employee pay plan (19-705.01 E.). The reemployment pay provision has been removed from the regulations because all re-employment situations will be treated as initial employment. In addition, the regulation concerning trainee status has been removed because that status is no longer used by agencies. The regulation which provides that an agency may not reduce the salary of an employee for two years upon the involuntary assignment of lower level responsibilities or demotion or downward

reclassification for involuntary or non-disciplinary reasons has been modified to provide salary protection for one year (19-705.05 B.3.b., 19-705.05 C.1.c., and 19-705.05 C.2.). In addition, a retention pay increase was revised so that an agency may exceed the 15% cap for bona fide offers from employers outside of State government upon approval by OHR (19-705.04 C.5.). The definition of shift differential was revised to apply to those employees who are “regularly” assigned to evening, night, weekend, rotating, or split shifts (19-705.07 D.).

19-706 ESTABLISHMENT OF UNCLASSIFIED POSITIONS AND THE UNCLASSIFIED EMPLOYEE PAY PLAN

This section covers four categories of unclassified employees, Agency Heads, Academic Personnel, Executive Compensation, and “Unclassified Other.” A new term, “unclassified state title change,” recognizes the movement of unclassified employees among different jobs. The section helps to clarify unclassified increases and decreases for employees in the categories of academic personnel and “unclassified other” to include certified teachers (19-706.04 C.2. and 19-706.04 D.3.b.). The current practice of awarding up to 15% salary increases at the agency level is detailed in this section with additional flexibility provided for academic personnel and other unclassified employees (19-706.04 C.2. and 19-706.04 D.3.b.). The section addressing summer employment has been amended to allow agencies to develop policies and procedures for governing the summer employment of their academic personnel within the 30% limitation (19-706.04 C.5.). This section also contains the statutory prohibition on retroactive pay increases (19-706.02 E.) and a regulation which specifies that the pay for classified employees moving to the unclassified service would be governed by the unclassified employee pay plan (19-706.02 I.). A regulation was added requiring agencies to keep FTEs within the appropriated limits regarding the number of classified and unclassified FTEs (19-706.02 H.).

19-707 HOURS OF WORK AND OVERTIME

A regulation was added prohibiting the payment of overtime to an exempt employee, which has been the practice for years (19-707.02 K.1.).

19-708 HOLIDAYS

The recent legislative changes recognizing Martin Luther King, Jr. Day and Confederate Memorial Day holidays have been added, as well as removing references to Election Day and an employee’s optional holiday (19-708.02 A.). This section details OHR’s interpretation on the calculation of an employee’s average workday to determine the number of hours of holiday compensatory time an employee may earn and use (19-708.02 D.). A provision was added that states when a holiday falls during a period of time an employee is on leave, the day is counted as a holiday and not as a day of leave (19-708.03 E.). Another provision clarifies that an employee who must work a shift which spans two holidays will be granted holiday compensatory time equal to the actual hours worked (19-708.04 C.). Finally, this section specifies that part-time employees in permanent positions should be treated the same as full-time employees in permanent positions in applying the holiday guidelines (19-708.02 C.).

19-709 AND 19-710 ANNUAL LEAVE AND SICK LEAVE

These sections detail OHR’s interpretation on the calculation of an average workday to determine the number of hours of annual and sick leave an employee earns and uses. In the annual leave section, the regulation providing calculation of an employee’s leave accrual date has been revised to reflect periods of leave without pay of more than 30 days, rather than 10 days (19-709.02 A.4.a.). This revision would also apply to calculation of an employee’s state service date and an employee’s review date. Also provided are examples of calculating annual and sick leave earnings for non-standard workweeks (19-709.02 B. 2. and 19-710.02 B.2.) and regulations dealing with an employee’s leave if the employee changes from full-time to part-time or vice versa (19-709.02 C.2. and 19-710.02 C.2.). The annual leave payout requirements were amended to comply with the Supreme Court’s *Littlefield* decision (19-709.05). A revised provision authorizes agencies to advance up to 15 days of sick leave to an employee for extenuating circumstances (19-710.03 A.).

19-712 OTHER LEAVE PROGRAMS

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This section outlines the other leave types excluding holiday, annual, and sick leave. A provision allowing for 10 days of leave for American Red Cross certified disaster volunteers was added as a result of the recent statutory change (19-712.01 C.). Another addition recognizes the practice of higher education institutions allowing sabbatical leave (19-712.01 M.).

19-715 EMPLOYEE PERFORMANCE EVALUATION SYSTEMS

The provisions clarify the impact of promotions, demotions, reclassification, reassignments, transfers, or unclassified state title changes on an employee's performance review date. A reference to the impact of a universal review date was added (19-715.02 E.5.) and the limit on consecutive workdays of leave without pay before the review date begins to advance was raised from ten to thirty days (19-715.02 E.1.). An additional provision advances an employee's review date six months when the employee transfers to a position in the same class at another agency within six months or less of his review date (19-715.02 E.4.). This section concludes by clarifying the establishment of review dates for Executive Compensation and other unclassified employees including those employees exempt from coverage by the State Employee Grievance Procedure Act (19-715.03).

19-716 STAFF DEVELOPMENT AND TRAINING

This section clarifies that agencies may pay for courses required for an employee to attain or maintain a professional license provided the license relates to the performance of the employee's job (19-716.03).

19-718 STATE EMPLOYEE GRIEVANCES AND APPEALS

A revision was made to this section to allow agencies 15 calendar days instead of 10 calendar days in which to submit records to the State Human Resources Director (19-718.05 D.2.). An amended provision allows the State Human Resources Director to appoint either one or two individuals, instead of just one individual, to serve as the mediator-arbitrator in the mediation-arbitration process (19-718.08 C.3.). A revision to the arbitration phase allows an employee to reserve up to one-half of the total time allotted to reply to the agency's oral contentions (19-718.08 F.2.b.).

19-719 SEPARATION FROM STATE SERVICE

This section specifies how the State government employment relationship may end. Information contained in this section came from several other sections of the regulations with mainly minor wording changes. For consistency of terminology, "termination" describes an action initiated by an agency and "separation" is a broader term to indicate the end of the employment relationship initiated by either the agency or the employee (19-719.03). This section clarifies the definition of break in service to include an exception stating that participation in the TERI program does not constitute a break in service (19-719.01 B.1.b.). This section clarifies that a reinstated employee who was separated by a reduction in force may buy back all, some, or none of his annual leave (19-719.04 B.4.d.)

Instructions: Replace the current regulations in their entirety with the new text as it appears below.

Text:

19-700 DEFINITIONS

The following definitions should be used in conjunction with these Regulations.

ACADEMIC PERSONNEL – presidents, provosts, vice-presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning or medical institutions of education and research.

AGENCY - a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition.

AGENCY HEAD - the person who has authority and responsibility for an agency.

AGENCY HIRE DATE – the date an employee begins employment with an agency without any adjustments.

APPEAL - the request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance.

APPOINTING AUTHORITY - the agency head or other person or group of persons empowered to employ.

BASE PAY - the rate of pay approved for an employee in his position exclusive of any additional pay, such as supplements, bonuses, longevity pay, temporary salary adjustments, shift differential pay, on-call pay, call back pay, special assignment pay, or market or geographic differential pay.

BASE PERIOD - the period of time that defines the regular annual schedule of employment (e.g., either a semester, an academic year, or ten months to 12 months).

BREAK IN SERVICE – an interruption of continuous State service. An employee experiences a break in State service when the employee (1) separates from State service and is paid for unused annual leave; (2) moves from one State agency to another and is not employed by the receiving agency within 15 calendar days following the last day worked (or approved day of leave at the transferring agency); (3) remains on leave for a period of more than one calendar year; (4) separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation; (5) involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts; or (6) moves from a full-time equivalent (FTE) position to a temporary, temporary grant, or time-limited position.

CALENDAR DAYS - the sequential days of a year. For purposes of calculating time frames under the State Employee Grievance Procedure Act, the time must be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or holiday, it must be excluded.

CLASS - a group of positions sufficiently similar in the duties performed; degree of supervision exercised or received; minimum requirements of education or experience; and the knowledge, skills, and abilities required, that the Office of Human Resources applies the same State class title and the same State salary range to each position in the group.

CLASS/UNCLASSIFIED STATE TITLE CODE - the alphanumeric identification assigned to a particular class or unclassified State title.

CLASSIFIED POSITION – an FTE position that has been assigned to a class.

CLASSIFIED SERVICE – all of those positions in State service which are subject to the position classification plan.

CLASS SERIES - a group of classes which are sufficiently similar in kind of work performed to warrant similar class titles, but sufficiently different in level of responsibilities to warrant different pay bands.

CLASS SPECIFICATION – the official description approved by the Office of Human Resources providing examples of the kind of work and level of responsibility normally assigned to positions that may be allocated to the class.

CLASS TITLE - the name assigned to a class by the Office of Human Resources.

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CLASS/UNCLASSIFIED STATE TITLE DATE – the date an employee enters his current class or unclassified State title.

COMPENSATION – monetary payment for services rendered.

CONFLICT OF INTEREST - any action or situation in which an individual's personal or financial interest or that of a member of his household might conflict with the public interest.

CONTINUOUS SERVICE – service with one or more State agencies without a break in service.

CONTINUOUS SERVICE DATE – the date that reflects the first date of State employment without a break in service.

COVERED EMPLOYEE - a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years’ duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.

DEMOTION – the assignment of an employee by the appointing authority from one established position to a different established position having a lower State salary range or, for employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee’s job duties also are decreased for nonpunitive reasons.

DUAL EMPLOYMENT – an agreement by which an employee with an employing agency accepts temporary, part-time employment with the same or another agency.

EMPLOYEE - any person in the service of an agency who receives compensation from the agency and where the agency has the right to control and direct the employee in how the work is performed.

EMPLOYING AGENCY – the agency having primary control over the services of the employee.

EXEMPT EMPLOYEE - an employee who is exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act due to employment in a bona fide executive, administrative, professional, or outside sales capacity.

FULL-TIME EQUIVALENT or FTE - a numerical value expressing a percentage of time in hours and of funds related to a particular position authorized by the General Assembly.

GRIEVANCE - a complaint filed by a covered employee or the employee’s representative regarding an adverse employment action taken by an agency designated in Section 8-17-330 of the South Carolina Code of Laws.

HOLIDAY – any holiday recognized by State law or enumerated in the South Carolina Code of Laws Section 53-5-10.

HOLIDAY COMPENSATORY TIME - leave time earned by an employee for work performed on a holiday.

IN-BAND INCREASE - a salary increase which is awarded within the pay band assigned to the employee's class.

INITIAL EMPLOYMENT - the employment of a person newly hired into State government in a classified or unclassified FTE position.

INSTRUCTIONAL PERSONNEL – for purposes of the State Employee Grievance Procedure Act, employees of an agency that has primarily an educational mission, excluding the State technical colleges and excluding those employees exempted in Section 8-17-370 10. of the South Carolina Code of Laws, who work an academic year.

INVOLUNTARY REASSIGNMENT - the movement of an employee's principal place of employment in excess of 30 miles from the prior workstation at the initiative of the agency. The reassignment of an employee by an agency in excess of 30 miles from the prior workstation to the nearest facility with an available position having the same State salary range for which the employee is qualified is not considered involuntary reassignment.

LEAVE ACCRUAL DATE – the date used to calculate an employee's rate of annual leave earnings, which includes: (1) all State service in an FTE position, including part-time service, adjusted to reflect periods of leave without pay of over 30 consecutive workdays and periods when there was a break in service; and, (2) all service as a certified employee in a permanent position of a school district of this State.

LEAVE DONOR - an employee of an employing agency whose voluntary written request for donation of sick or annual leave to the pool leave account of his employing agency is granted.

LEAVE RECIPIENT - an employee of an employing agency who has a personal emergency and is selected and approved to receive sick or annual leave from the pool leave account of his employing agency.

MEDIATION - an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non-adversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

MEDIATION-ARBITRATION - an alternative dispute resolution process that provides for the submission of an appeal to a mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

NONEXEMPT EMPLOYEE - an employee who is covered by the Fair Labor Standards Act and who is, therefore, subject to both the minimum wage and overtime requirements of the law.

OFFICE OF HUMAN RESOURCES (OHR) - the central State human resources entity under the Budget and Control Board.

PAY BAND – for classified positions, the dollar amount between the minimum and maximum rates of pay to which a class is assigned by OHR.

PAY SCHEDULE - the official list of pay bands.

PERFORMANCE REVIEW DATE – the first day which marks the beginning of a new performance review period.

PERMANENT STATUS – the status attained by an employee upon completion of a probationary or trial period in a class or an unclassified State title.

PERSONAL EMERGENCY - a catastrophic and debilitating medical situation, severely complicated disability, severe accident case, family medical emergency, or other hardship situation that is likely to require

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an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

POSITION - those duties and responsibilities constituting a single job.

POSITION NUMBER - a unique number assigned to an FTE position by OHR.

PROBATIONARY STATUS - the status of an employee during the probationary period.

PROBATIONARY EMPLOYEE - a full-time or part-time employee occupying a part or all of an FTE position in the initial working test period of employment with the State of 12 months' duration for non-instructional personnel, of the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

PROBATIONARY PERIOD - an initial working test period of employment in an FTE position with the State of not more than 12 months' duration for non-instructional personnel or the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

PROMOTION – the assignment of an employee by the appointing authority from one established position to a different established position having a higher State salary range or, for positions without a State salary range, having a higher rate of pay. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.

PUNITIVE RECLASSIFICATION – for classified employees, the assignment of a position in one class to a different class with a lower pay band with the sole purpose to penalize the covered employee.

REALLOCATION – for classified positions, the assignment of all positions in a class from one pay band to another pay band.

REASSIGNMENT - the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.

RECLASSIFICATION – for classified positions, the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

REDUCTION IN FORCE - the procedure used by an agency to eliminate or reduce a portion of one or more filled FTE positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes.

REEMPLOYMENT - the employment of a person following a break in service in an FTE position.

REINSTATEMENT - the return of an employee to State service without a break in service. Examples include return resulting from: (1) the Reduction in Force procedure; (2) the reversal of a termination under the State Employee Grievance Procedure Act; (3) the settlement of a complaint negotiated under an authorized administrative agency; or, (4) the order of a court.

REQUESTING AGENCY – for dual employment purposes, the agency engaging the services of and compensating any employee for services which are clearly not a part of the employee's regular job.

RESIGNATION – written or oral notification by an employee of his relinquishment of employment.

SEPARATION – action initiated by either the agency or employee which ends the employment relationship.

SHIFT DIFFERENTIAL - the additional amount of pay awarded to employees who are assigned to an evening, night, weekend, rotating, or split-shift, provided a majority of the hours worked are other than 8:00 a.m. to 5:00 p.m., Monday through Friday.

SLOT NUMBER - the number used to identify individual positions in a class or unclassified State title within an agency.

STATE EMPLOYEE GRIEVANCE COMMITTEE - the committee composed of State employees who are appointed by the Budget and Control Board and who conduct hearings involving appeals filed by covered employees.

STATE HIRE DATE - the first date of State employment adjusted to reflect periods of authorized leave without pay of over 30 consecutive work days in any one calendar year and periods when there were breaks in service.

STATE HUMAN RESOURCES DIRECTOR - the head of the Office of Human Resources of the State Budget and Control Board, or his designee who is responsible for statewide coordination of human resources programs.

STATE SALARY RANGE – the dollar amount between the minimum and maximum rates of pay as established by OHR.

STATE SERVICE TIME - the total employment time defined in years, months, and days in which an employee has occupied an FTE position, including part-time service.

SUPERVISOR - an individual who directs one or more subordinates and is designated as the rater on those subordinates' performance evaluations.

SUPPLEMENT – any compensation, excluding travel reimbursement, from an affiliated public charity, foundation, clinical faculty practice plan, or other public source or any supplement from a private source to the salary appropriated for a State employee and fixed by the State.

SUSPENSION - an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

TEACHERS - individuals employed in instructional positions for which certification is required.

TEMPORARY EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

TEMPORARY GRANT EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position and is hired to fill a position specified in and funded by a federal grant, public charity grant, private foundation grant, or research grant and who is not a covered employee.

TEMPORARY POSITION - a full-time or part-time non-FTE position created for a period of time not to exceed one year.

TEMPORARY SALARY ADJUSTMENT - compensation not included in an employee's base salary that is awarded for a limited period of time.

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TERMINATION – for purposes of the State Employee Grievance Procedure Act, the action taken by an agency against an employee to separate the employee involuntarily from employment.

TIME-LIMITED PROJECT EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position who is hired to fill a position with time-limited project funding approved or authorized by the appropriate State authority, and who is not a covered employee.

TRANSFER - the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another agency which does not require reclassification.

TRIAL PERIOD – the initial working test period of six months required of a covered employee upon movement to any class or an unclassified State title in which the employee has not held permanent status.

TRIAL STATUS – the status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee's position to any class or unclassified State title in which the employee has not held permanent status.

UNCLASSIFIED POSITION – an FTE position that has been assigned to an unclassified State title.

UNCLASSIFIED SERVICE – all those positions in the State service which are not subject to the position classification plan.

UNCLASSIFIED STATE TITLE - the name assigned to an unclassified position or to a group of similar positions by the Office of Human Resources.

WORKDAY (AVERAGE) – the number of hours upon which leave and holidays are based. To determine the number of hours in an average workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

19-701 GENERAL RULES

SCOPE AND PURPOSE

Human Resources Regulations Sections 19-700 through 19-720 are applicable to all agencies that are not specifically exempted by Section 8-11-260 of the South Carolina Code of Laws.

19-701.01 EQUAL EMPLOYMENT OPPORTUNITY

The State of South Carolina is an equal employment opportunity employer.

19-701.02 CONSTRUCTION OF WORDS

All words in these Regulations referencing the masculine gender shall apply to females as well.

19-701.03 STATE AND FEDERAL LAWS

These Regulations are in addition to the requirements of applicable State and federal laws.

19-701.04 AUDITS BY THE OFFICE OF HUMAN RESOURCES (OHR)

All information and documentation required by these Regulations are subject to audit by OHR.

19-701.05 HUMAN RESOURCES INFORMATION SYSTEM (HRIS)

As required by Section 8-11-230 of the South Carolina Code of Laws, HRIS serves as the central database to maintain human resources data on all employees. To maintain the integrity and completeness of the compensation module of HRIS, all agencies are required to submit appropriate information in a timely manner.

19-701.06 ETHICS ACT

The Ethics Act governs the employment of family members and conflicts of interest. For additional information consult the Ethics Act (Section 8-13-100 through Section 8-13-1520 of the South Carolina Code of Laws), the Ethics Commission opinions, and the State Ethics Commission.

A. Employment of Family Members

No public official, public member, or public employee may cause the employment, appointment, promotion, reassignment, transfer, or advancement of a family member to a State or local office or position in which the public official, public member, or public employee supervises or manages. Family member means an individual who is (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild, or (b) a member of the individual's immediate family. Immediate family is defined as follows:

1. A child residing in a candidate's, public official's, public member's, or public employee's household;
2. A spouse of a candidate, public official, public member, or public employee; or
3. An individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, or public employee's spouse as a dependent for income tax purposes.

B. Conflict of Interest

No employee may accept any work or compensation that could be reasonably construed as a conflict of interest. Acceptance without proper prior approval of work assignment or compensation that is found to be a conflict of interest may be grounds for disciplinary action or termination. The propriety of an employment situation or compensation for services rendered shall be considered by all parties concerned. Counsel from the Office of the Attorney General or the State Ethics Commission may be necessary to make such determinations.

19-701.07 EMPLOYMENT OUTSIDE OF STATE GOVERNMENT

Agencies may adopt policies and procedures for the approval and regulation of jobs held by employees outside of State government. Such policies shall be in accordance with law and the policies and procedures of the Budget and Control Board. An agency may withdraw approval for such secondary employment for reasonable work-related issues.

19-701.08 SOLICITATION AND DISTRIBUTION

Solicitations and distributions by agency employees or outside individuals are generally prohibited on agency property during working hours. Each agency is responsible for enforcing this Regulation to minimize the disruption of agency business. For example, agencies may allow for fund raising activities by charitable organizations which are certified by the Secretary of State. Any fund raising activities must be approved by the agency head or his designee and conducted under agency supervision.

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19-701.09 PILOT PROGRAMS TO CREATE INNOVATION IN STATE GOVERNMENT

Notwithstanding other provisions of law, the Budget and Control Board is authorized to enter into pilot programs with individual agencies or groups of agencies in order to create innovations in State government. The Budget and Control Board will monitor the findings and results of pilot programs to determine if legislative recommendations should be provided to the General Assembly.

19-702 CLASSIFICATION PLAN

SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Classification Plan applicable to all positions in the classified service.

19-702.01 STATEMENTS OF POLICY

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the Classification Plan.
- B. The Office of Human Resources (OHR) shall establish the Classification Plan to consist of (1) all approved classes of positions, (2) the allocation of each position to its proper class, (3) the class specifications for all approved classes of positions, and (4) the Regulations and procedures governing the administration of the Classification Plan.
- C. A class shall be established for each broad category of work and its level of difficulty and responsibility.
- D. Each class shall be defined by a class specification and shall be assigned to an appropriate pay band.
- E. The Office of Human Resources will maintain a list of approved classes.
- F. No action shall be taken to fill any position until it has been authorized by the General Assembly and established in accordance with the Classification Plan. When establishing a classified position, OHR assigns a position number, class title, class code, slot number, and pay band.
- G. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized full-time equivalent (FTE) positions. (*Refer to Section 19-704.08.*)
- H. The Office of Human Resources is authorized to delegate to agencies by written agreement classification programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- I. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

19-702.02 ADMINISTRATION OF THE PLAN

- A. The State Human Resources Director shall administer the Classification Plan.
- B. Before an agency fills or alters a position, OHR must approve the following actions:

1. The initial classification of the position;
 2. The reclassification of the position; or
 3. The creation of new classes and the revision or abolishment of existing classes.
- C. The Office of Human Resources shall coordinate periodic studies to ensure that the Classification Plan is current and uniform.
- D. As requested, agencies must submit to OHR all current position descriptions, organizational charts, and other information as needed to administer the classification plan.

19-702.03 CLASS SPECIFICATIONS

- A. Each class specification shall describe in general terms examples of the kind of work and level of responsibility normally assigned positions that may be allocated to the class. The exact duties and responsibilities of positions allocated to any one class may differ; however, all positions allocated to a class shall be sufficiently similar as to kind of work, level of difficulty or responsibility, and qualification requirements.
- B. The Office of Human Resources shall develop class specifications which include the following:
1. Class Title and Code
 2. General Nature of Work - the brief statement summarizing the work to be performed by individuals in this class.
 3. Guidelines for Class Use/Distinguishing Characteristics - the brief statement summarizing the level of work performed, the breadth of job responsibilities, and level of supervision given or received. This section may be omitted if it is not needed for further clarification.
 4. Examples of Work - statements of duties that reflect responsibility common to positions in the class, but not necessarily fully descriptive of any one position in the class.
 5. Knowledge, Skills and Abilities - a list of individual characteristics each of which is required for the successful performance of one or more job duties of the class, but not necessarily fully descriptive of the requirements for any one position in the class.
 6. Necessary Special Requirements - statements of professional or physical requirements, such as licensure or certification, which may be mandatory for some or all positions in the class. This section may be omitted if it is not needed for further clarification.
 7. Minimum Requirements - a statement of the minimum combination of education and experience required for the satisfactory performance of the duties of positions in the class, but not necessarily fully descriptive of the education and experience required for any one position in the class. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.
- C. Current class specifications shall be maintained by OHR. The Office of Human Resources will notify agencies of any revisions and additions to the class specifications.

19-702.04 POSITION DESCRIPTIONS

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- A. The Office of Human Resources shall develop a position description form to be used by agencies in describing assigned duties and other information necessary to determine the proper classification of each position. An agency may develop a position description form which must be approved by OHR prior to implementation.
- B. The position description shall serve as a record of the duties assigned to an individual position in a class. The position description is used to compare positions to ensure uniformity of classification and as a basis for other human resources decisions.
- C. The position description shall include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position, the percentage of time normally devoted to each duty, and the designation of essential and marginal functions.
- D. Position descriptions should be updated to reflect any changes in the assigned job duties and responsibilities or any other pertinent information concerning the position. The supervisor should discuss this updated position description with the employee.
- E. Agencies shall submit current position descriptions to OHR. Current position descriptions shall be maintained by both the agency and OHR.

19-702.05 RECLASSIFICATION OF POSITIONS

- A. An established position may be reclassified from one class to a different class as a result of a natural or an organizational change in the duties or responsibilities of the position.
- B. When reclassifying a filled position, the assignment of new duties or responsibilities should not have the effect of creating a new position.
- C. The Office of Human Resources shall approve all reclassifications.

19-702.06 POSITION NUMBERING SYSTEM

The Office of Human Resources shall develop and maintain a position numbering system that will identify each established position.

19-703 JOB VACANCY ANNOUNCEMENTS

SCOPE AND PURPOSE

This Regulation governs the announcement of vacancies in all positions in the classified service.

19-703.01 STATEMENTS OF POLICY

- A. The Budget and Control Board designates the Office of Human Resources (OHR) to administer all policies and procedures relating to the South Carolina Code of Laws, Section 8-11-120, Report of Job Vacancies.
- B. Applicants selected for hiring must meet the minimum requirements of the class as established by OHR unless the State Human Resources Director has approved an equivalency.

19-703.02 REPORT OF JOB VACANCIES

- A. All State offices, agencies, departments, and other divisions and branches of State government shall notify, at least five workdays prior to the close of the application period, the Columbia Metro Job Service Office of the South Carolina Employment Security Commission, and the Office of Human Resources of the Budget and Control Board, of a vacancy in any employment position for which recruitment will be undertaken, except those employment positions exempt from the classification and compensation plan under the provisions of Section 8-11-270 of the South Carolina Code of Laws.
- B. As established in Section 8-11-120 of the South Carolina Code of Laws, the notification of a vacancy must include the following data:
1. The title of the position and a summary description of the job responsibilities for the vacant position if needed for clarification;
 2. The entry salary or State salary range for the vacant position;
 3. The name of the agency where the vacant position exists;
 4. A description of the application process for the vacant position;
 5. Residency requirements, if any, for the vacant position;
 6. The class code, the slot, and the position number of the vacant position;
 7. The minimum requirements for the vacant position, as well as preferred qualifications, if any:
 - a. For the purpose of reporting a job vacancy, minimum requirements are the minimum training and experience requirements that are established by the agency for the vacant position. An agency's minimum training and experience requirements shall be either the minimum requirements that OHR has established for the class or additional requirements established by the agency that are directly related to the successful performance of essential job functions as described on the position description. Any additional requirements must exceed the minimum requirements that OHR has established for the class.
 - b. Preferred qualifications are defined as any other qualifications that are desirable, but not mandatory, for the performance of essential job functions upon entry into the position;
 8. The opening and closing dates for applying for the vacant position;
 9. A statement certifying that the employing agency is an equal employment opportunity/affirmative action employing agency; and
 10. The normal work schedule and whether the position is full-time or part-time.
- C. Use of the Human Resources Information System (HRIS) vacancy posting system meets the requirements of Paragraphs A and B of this Section.

19-703.03 INTERNAL POSTING AND DISTRIBUTION OF ANNOUNCEMENTS

The notification must be posted conspicuously within the agency where the vacancy exists. If the vacancy is a promotional opportunity that requires work experience within the agency to qualify for the promotion, notice of the vacancy must be posted in a conspicuous place within the agency for five workdays, and the

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notice does not have to be sent to the Columbia Metro Job Service Office or to the Office of Human Resources.

19-703.04 EXEMPTIONS TO POSTING JOB ANNOUNCEMENTS

If an emergency situation exists requiring the vacancy to be filled immediately, certification of the emergency must be made to and approved by the agency head or his designee waiving the posting requirement at the agency and State level.

When an agency decides to promote an employee one organizational level above the employee's current level, the posting requirement may be waived.

19-703.05 FREEDOM OF INFORMATION ACT REQUESTS

A public body may, but is not required to, exempt from disclosure all materials, regardless of form, gathered by the public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item, materials relating to not fewer than the final three applicants, do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by Section 30-4-40 of the South Carolina Code of Laws.

19-704 MOVEMENT AND STATUS

SCOPE AND PURPOSE

This Regulation governs the movement of classified and unclassified employees and positions. This Regulation also governs the status of classified and unclassified employees except those employees exempt from coverage under the State Employee Grievance Procedure Act.

19-704.01 STATEMENTS OF POLICY

A. Movement of a person into or between full-time equivalent (FTE) positions may occur by:

1. Initial Employment or Reemployment
2. Promotion
3. Demotion
4. Reassignment
5. Transfer

(Refer to Sections 19-704.02 through 19-704.05.)

B. Movement of a position may occur through a reclassification in the classified system or an unclassified State title change in the unclassified system. *(Refer to Sections 19-704.06 and 19-704.07.)*

C. A position may move between the classified and unclassified systems provided the agency does not exceed its number of classified and unclassified authorized FTEs. *(Refer to Section 19-704.08.)*

- D. A person who moves into or between an FTE position(s) in the classified system must meet minimum requirements established in the class specification. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.
- E. When a person moves into or between an FTE position(s) or when an employee's position is reclassified or has an unclassified State title change, the following types of status apply:
 - 1. Probationary – The status of a full-time or part-time employee occupying all or part of an FTE position in the initial working test period of employment with the State of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
 - 2. Covered – The status of a full-time or part-time employee occupying all or part of an FTE position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and has grievance rights. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee.
 - 3. Trial – The status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee's position to any class or unclassified State title in which the employee has not held permanent status.

F. Permanent Status in a Class or Unclassified State Title

An employee shall attain permanent status in a class or unclassified State title upon completion of a probationary or trial period in that class or unclassified State title. Once attained, permanent status in a class or unclassified State title is retained throughout the employee's continuous State service.

G. Performance Review Dates

For the establishment of an employee's performance review date, refer to Sections 19-715.02 through 19-715.04.

19-704.02 INTIAL EMPLOYMENT OR REEMPLOYMENT

- A. Initial employment is defined as the employment of a person newly hired into State government in a classified or unclassified FTE position.
- B. Reemployment is defined as the employment of a person following a break in service in a classified or unclassified FTE position.
- C. Probationary Status

Upon initial employment or reemployment the employee shall be in probationary status.

D. Probationary Period

- 1. An employee in probationary status must complete a probationary period of:

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- a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in any temporary capacity toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
 3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

19-704.03 PROMOTION

- A. Promotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:
 1. Having a higher State salary range; or
 2. For positions without a State salary range, having a higher rate of pay.

B. Probationary or Trial Status

Upon promotion, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which promoted, the promotion shall be with permanent status in the class or unclassified State title and the employee is not in trial status.

C. Probationary Period

1. An employee in probationary status who is promoted must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

D. Trial Period

A covered employee who is promoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up

to ninety calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.04 DEMOTION

A. Demotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:

1. Having a lower State salary range; or
2. For employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee's job duties also are decreased for nonpunitive reasons.

B. Probationary or Trial Status

Upon demotion, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which demoted, the demotion shall be with permanent status in the class or unclassified State title and the employee is not in probationary or trial status.

C. Probationary Period

1. An employee in probationary status who is demoted must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

D. Trial Period

A covered employee who is demoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.05 REASSIGNMENT AND TRANSFER

A. Reassignment is defined as the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.

B. Transfer is defined as the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another

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agency which does not require reclassification.

C. Probationary or Trial Status

Upon reassignment or transfer, an employee shall be in probationary or trial status; however, a covered employee with permanent status in the class or unclassified State title is not in probationary or trial status when the reassignment or transfer:

1. Does not change the employee's class or unclassified State title; or
2. Is to a class or unclassified State title in which the employee already holds permanent status in the class or unclassified State title.

D. Probationary Period

1. An employee in probationary status who is reassigned or transferred must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period. If the reassignment or transfer is not to a new class or unclassified State title, the employee's probationary period shall not change.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

E. Trial Period

A covered employee who is reassigned or transferred to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended by the agency head up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.06 RECLASSIFICATION

For classified positions, reclassification is defined as the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position. Reclassifications can occur:

A. Upward – The position moves from one class to another class having a higher State salary range.

1. Probationary or Trial Status

Upon upward reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the upward reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is reclassified upward must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee who is reclassified upward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

B. Downward – The position moves from one class to another class having a lower State salary range.

1. Probationary or Trial Status

Upon downward reclassification, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the downward reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is reclassified downward must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

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A covered employee who is reclassified downward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

C. Lateral – The position moves from one class to another class having the same State salary range.

1. Probationary or Trial Status

Upon lateral reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the lateral reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is reclassified laterally must complete a probationary period of:

(1) Twelve months' duration for noninstructional personnel;

(2) The academic year duration for instructional personnel (teachers); or

(3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee who is reclassified laterally to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.07 UNCLASSIFIED STATE TITLE CHANGES

An unclassified State title change is defined as the assignment of a position in one unclassified State title to another unclassified State title which is the result of a natural or an organizational change in duties or responsibilities of the position. An unclassified State title change can occur:

A. Upward – The position moves from one unclassified State title to another unclassified State title having a higher State salary range or for a position without a State salary range, the position moves from one unclassified State title to another unclassified State title with higher level job duties or responsibilities as defined by the agency.

1. Probationary or Trial Status

Upon upward unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the upward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is moved upward must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved upward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

B. Downward – The position moves from one unclassified State title to another unclassified State title having a lower State salary range or for a position without a State salary range, the position moves from one unclassified State title to another unclassified State title with lower level job duties or responsibilities as defined by the agency.

1. Probationary or Trial Status

Upon downward unclassified State title change, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the downward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is moved downward must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.

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- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved downward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

C. Lateral – The position moves from one unclassified State title to another unclassified State title having the same State salary range or an equivalent level of job duties or responsibilities as defined by the agency.

1. Probationary or Trial Status

Upon lateral unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the lateral move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is moved laterally must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved laterally to an unclassified State title in which he has not held permanent must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.08 MOVEMENT BETWEEN CLASSIFIED SERVICE AND UNCLASSIFIED SERVICE

A. Classified Service to Unclassified Service

1. Movement of the Employee

a. When an employee moves from a classified position to an unclassified position with a State salary range, the employee's status will be governed by Regulations 19-704.03 through 19-704.05 concerning the promotion, demotion, reassignment, or transfer of an unclassified employee.

b. When an employee moves from a classified position to an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Sections 19-704.03 through 19-704.05.

2. Movement of the Position

a. When the position an employee occupies moves from the classified service to the unclassified service, the employee's status will be governed by Regulation 19-704.07 concerning the movement of unclassified positions.

b. When the position an employee occupies moves from classified service to become an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the employee's status will be governed by Section 19-704.07 concerning the movement of unclassified positions.

B. Unclassified Service to Classified Service

1. Movement of the Employee

a. When an employee moves from an unclassified position with a State salary range to a classified position, the employee's status will be governed by Sections 19-704.03 through 19-704.05 concerning the promotion, demotion, reassignment, or transfer of classified employees.

b. When an employee moves from an unclassified position without a State salary range to a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Sections 19-704.03 through 19-704.05.

2. Movement of the Position

a. When the position an employee occupies moves from the unclassified service to the classified service, the employee's status will be governed by Section 19-704.06 concerning the reclassification of positions.

b. When the position an employee occupies changes from an unclassified position without a State salary range to become a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the employee's status will be governed by Section 19-704.06 concerning the reclassification of positions.

19-705 CLASSIFIED EMPLOYEE PAY PLAN

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SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Pay Plan applicable to all positions in the classified service.

19-705.01 STATEMENTS OF POLICY

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the Pay Plan.
- B. The Office of Human Resources (OHR) shall establish and maintain a Pay Plan to consist of (1) the official classification listing, (2) the official pay schedule, and (3) the Regulations and procedures governing the administration of the Pay Plan.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the Budget and Control Board. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.
- D. The Office of Human Resources is authorized to delegate to agencies by written agreement pay programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- E. When an employee moves from an unclassified position to a classified position, the employee's pay will be governed by the classified pay plan.
- F. An agency requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- G. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- H. An agency shall maintain documentation appropriate for the administration of this Regulation.
- I. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.
- J. The State Human Resources Director shall have the authority to make exceptions to Section 19-705.

19-705.02 ADMINISTRATION OF THE PAY PLAN

- A. The Office of Human Resources periodically shall conduct studies for the purpose of making recommendations that will maintain a competitive Pay Plan.
- B. An employee shall be paid within the pay bands in the official pay schedule and in accordance with the provisions of this Regulation.

- C. An employee shall not be paid in excess of the maximum of the pay band for a class, unless such payment is authorized by this Regulation.
- D. Any pay action which requires approval from OHR must receive such approval prior to an agency effecting the action.
- E. Prior to submission to OHR for approval, the agency human resources shall review all proposed pay changes to determine that they are in compliance with the provisions of this Regulation.

19-705.03 HIRING SALARIES

- A. Hiring at the Minimum - An employee must be paid at least the minimum of the pay band for the class to which hired.
- B. Hiring Above the Minimum
 - 1. Exceptional Qualifications – If an individual is exceptionally qualified for the position, OHR may authorize a salary for the individual at a rate above the minimum of the pay band for the class based on written justification submitted by the agency.
 - 2. Special Hire Rate – Based on written justification submitted by the agency, the Office of Human Resources may approve a special hire rate when experience has shown that recruitment of qualified applicants for selected positions in a class has not been possible at the minimum of the pay band.

19-705.04 SALARY INCREASES

- A. Agencies shall develop written policies to govern the administration of salary increases for employees.
- B. Legislative Increase – General and Merit Increases shall be provided to employees in accordance with the provisions of the annual Appropriation Act.
- C. In-Band Salary Increase - Written justification for awarding an in-band salary increase shall be maintained by the employing agency. An employee's salary may be increased within his current pay band for the following reasons:
 - 1. Performance Increase – An agency may increase an employee's salary based upon performance in accordance with Section 8-1-160 of the South Carolina Code of Laws. Such increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the pay band.
 - 2. Additional Skills or Knowledge Increase - An in-band increase may be granted when an employee gains additional skills or knowledge directly related to the job. An employee's salary may be increased by up to 15% for the acquisition of additional skills or knowledge, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
 - 3. Additional Job Duties or Responsibilities Increase - An in-band increase may be granted when an employee is assigned additional job duties or broader responsibilities, either within his current position or as a reassignment to another position in the same pay band in the employing agency. An employee's salary may be increased by up to 15% for the recognition of the additional job duties or responsibilities, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval. Should the additional job duties or responsibilities be removed from the

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employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of the additional job duties or responsibilities increase. *(For removal of additional job duties or responsibilities, refer to Section 19-705.05 B. 2.)*

4. Transfer Increase - An in-band increase may be granted when an employee accepts a position within another agency which is in the same pay band as his current position. An employee's salary may be increased by up to 15% for the recognition of a transfer, provided such increase does not place the employee's salary above the maximum of the pay band.
 5. Retention Increase - An in-band increase may be granted when an employee has a bona fide job offer from another employer, either within or outside of State government, and an agency wishes to retain the services of this employee in his current position. An employee's salary may be increased by up to 15% for the purpose of retention, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15% for employees who have bona fide job offers outside of State government, the agency must submit written justification to OHR for approval. An employee shall receive no more than one retention increase in a one-year period.
- D. Salary Increases Resulting from Upward Band Changes - An employee's salary may be increased as a result of movement to a higher pay band for the following reasons:
1. Promotional Increase
 - a. Upon promotion, the employee must be paid at least the minimum of the pay band of the class to which promoted.
 - b. Upon promotion, an employee's salary may be increased by up to 15% of his salary prior to promotion, or to the midpoint of the new pay band, whichever is greater. For an increase of more than 15% and above the midpoint of the pay band, the agency must submit written justification to OHR for approval. Such increase shall not place the employee's salary above the maximum of the new pay band.
 2. Reclassification Increase
 - a. When an employee's position is reclassified to a class with a higher pay band, the employee's salary shall be increased to at least the minimum of the pay band of the class to which reclassified.
 - b. Upon reclassification, an employee's salary may be increased by up to 15% of the salary prior to reclassification, provided such increase does not place the employee's salary above the maximum of the new pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
 3. Reallocation Increase - When OHR reallocates a class to a higher pay band:
 - a. An employee in that class shall receive a salary increase at least to the new minimum of the new pay band; or
 - b. An employee in that class may receive up to a 15% salary adjustment provided such increase does not place an employee's salary above the maximum of the new pay band.
- E. An employee is not eligible to receive a salary increase upon downward reclassification or demotion.

- F. Return from Leave Without Pay - An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee shall be granted any legislative increases authorized during the employee's leave of absence. In determining the amount of adjustment that the employee shall be granted, the same implementation instructions that applied to all employees in that class shall be followed.

19-705.05 SALARY DECREASES

- A. Agencies shall develop written policies to govern the administration of salary decreases for employees.
- B. In-Band Salary Decreases - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased within his current pay band for the following reasons:

1. Performance Decrease – An agency may decrease an employee's salary based upon performance in accordance with Section 8-1-160 of the South Carolina Code of Laws. Such decrease shall be determined by the agency. Performance decreases must not place an employee's salary below the minimum of the pay band. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation.

2. Removal of Additional Job Duties or Responsibilities

Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.

3. Assignment of Lower Level Responsibilities

- a. Voluntary Reason - An employee who is voluntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, may, at the discretion of the agency head or his designee, be paid at any rate within the pay band provided the rate is equal to or below the current salary and provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

- b. Involuntary Reason - An employee who is involuntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board or his designee. After the expiration of the one-year period, with the approval of the agency head, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. If the employee's salary is allowed to remain above the maximum of the lower pay band, the employee shall not be eligible for pay increases unless:

- (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.

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C. Salary Decreases Resulting from Downward Band Changes - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased as a result of movement to a lower pay band for the following reasons:

1. Demotion and Downward Reclassification Decreases

- a. Voluntary Reason - An employee who voluntarily has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head or his designee, be paid at a salary equal to or below the current salary. However, the rate must be within the lower pay band and the employee must sign a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
- b. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head, be paid at a rate equal to or below the current salary, but within the lower pay band.
- c. Involuntary or Non-Disciplinary Reason – When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reclassified to a class in a lower pay band for these reasons, the employee's salary shall not be reduced for a period of one year from the date of the demotion or downward reclassification unless an exception is approved by the Budget and Control Board. After the expiration of the one- year period, with the approval of the agency head, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. If the employee's salary is allowed to remain above the maximum of the lower pay band, the employee shall not be eligible for pay increases unless:
 - (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
 - (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.
- d. An employee who is promoted or his position is reclassified upward, and subsequently demoted or his position is reclassified downward prior to attaining permanent status in a class of a higher pay band, shall have a reduction in pay as follows:
 - (1) When an employee is demoted or his position is reclassified to the previous class or to a class with the same pay band held prior to promotion or reclassification, or to a class with a lower pay band, the employee's salary will be reduced by the amount previously received upon promotion or upward reclassification provided the salary will not exceed the maximum of the pay band for the class to which demoted or downwardly reclassified.
 - (2) When an employee is demoted or his position is reclassified downward to a class having a higher pay band than the original position, the employee's salary will be reduced by the amount previously received upon promotion or reclassification and the employee's new salary will be established in accordance with Section 19-705.04 D.

2. Downward Band Reallocation

When a class is reallocated to a lower pay band, the pay of an employee shall not be changed as a result of this action for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. If the employee's salary exceeds the maximum of the new pay band, the employee shall not be eligible for pay increases of any type unless:

- a. Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- b. The employee is subsequently promoted or his position is reclassified, and his current rate of pay is below the maximum of the pay band for the class to which promoted or reclassified.

19-705.06 SPECIAL SALARY ADJUSTMENTS

The State Human Resources Director is authorized to approve pay actions outside the provisions of Section 19-705.04 and 19-705.05 if circumstances warrant such approval.

19-705.07 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment – The Office of Human Resources is authorized to approve a temporary salary adjustment for an employee in a full-time equivalent (FTE) position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Shift Differential Pay - The Office of Human Resources may approve the additional payment of a shift differential for an employee assigned to an evening, night, weekend, rotating, or split shift, provided that the majority of hours assigned during the shift are other than 8:00 a.m. to 5:00 p.m., Monday through Friday. The employee's pay shall be adjusted by the amount approved, even if such amount increases the employee's salary above the maximum of the pay band for the class.
- C. On-Call Pay - On-call pay is pay by the employing agency for an employee to remain available to return to work within a specified period of time. The Office of Human Resources must approve on-call pay for employees.
- D. Call Back Pay - Call back pay is pay by the employing agency for an employee to report to work either before or after normal duty hours to perform emergency services. Each agency shall determine which groups of employees shall be subject to call back. Nonexempt employees shall be compensated for hours worked as a result of a call back at their regular hourly rate plus any shift differential for which they might be eligible and such time shall be counted in computing any overtime that may be due. When an employee to be called back for emergency services which require less than two hours on the job, or when no work is available when he reports, the employee shall be compensated a minimum of two hours. An employee shall not receive call back pay if:
 1. The call back has been canceled and the employee received notice in advance not to report to work, or
 2. The employee refuses alternate work that is offered upon reporting to work.
- E. Special Assignment Pay – The Office of Human Resources may approve additional compensation to an employee for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by OHR.

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- F. Market or Geographic Differential Pay - The Office of Human Resources may approve Market or Geographic Differential Pay for an employee for periods of time when circumstances warrant such approval.
- G. Bonuses – The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Budget and Control Board in the administration of bonus programs.
- H. Longevity Pay

The Longevity Salary Increase Program was discontinued in 1986. Individuals awarded longevity increases prior to the discontinuance of the program will continue to receive such previously awarded increases until termination of employment with State government. To calculate a salary increase for an employee who is presently receiving longevity pay, an agency shall:

1. Deduct the longevity increase from the total compensation;
2. Calculate the increase on the reduced salary in accordance with applicable provisions of Section 19-705.03; and
3. Add the longevity increase to the new salary.

19-705.08 EFFECTIVE DATES OF SALARY CHANGES

- A. The effective date of all salary changes provided in this Regulation shall be no earlier than the date the action is approved by the appropriate authority.
- B. Retroactivity

Agencies must comply with Article III, Section 30 of the South Carolina Constitution regarding retroactivity.
- C. Concurrent Increases
 1. When general increases and other salary increases are awarded on the same date, the general increase shall be applied prior to any other salary increases.
 2. When performance pay increases under Section 8-11-940 of the South Carolina Code of Laws and salary increases other than general increases are awarded on the same date, the performance pay increases shall be applied prior to any other salary increases.
- D. Budgetary Limitations

In the case of budgetary limitations, OHR may approve exceptions to those salary increases that require approval by OHR regarding the effective date of salary increases based on written justification provided by the agency. Agencies should document internally the need to make exceptions regarding the effective date of salary increases for those increases for which they have approval authority.

19-706 ESTABLISHMENT OF UNCLASSIFIED POSITIONS AND THE UNCLASSIFIED EMPLOYEE PAY PLAN

SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Unclassified Pay Plan applicable to all unclassified positions, except athletics coaches and unclassified employees in the athletics department of post secondary educational institutions as defined in Section 59-107-10 of the South Carolina Code of Laws except the technical education colleges.

19-706.01 CATEGORIES OF UNCLASSIFIED POSITIONS

- A. An unclassified position is a full-time equivalent (FTE) position that has been assigned to an unclassified State title and falls under one of the following categories: 1) agency head covered by the Agency Head Salary Commission, 2) Executive Compensation System, 3) academic personnel, or 4) unclassified other.
- B. The compensation of agency heads covered by the Agency Head Salary Commission is addressed in Section 19-706.04 A.
- C. The compensation of employees in positions covered by the Executive Compensation System is governed by Section 19-706.04 B.
- D. Academic personnel are defined by Section 8-11-220 of the South Carolina Code of Laws as “presidents, provosts, vice presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning, or medical institutions of education and research.” The compensation of employees in positions in the category of academic personnel is governed by Section 19-706.04 C. Presidents who are covered by the Agency Head Salary Commission are not subject to the Regulations pertaining to academic personnel.
- E. Positions in the category of Unclassified Other include:
 - 1. Agency heads not covered by the Agency Head Salary Commission;
 - 2. Designated staff of the Governor’s office;
 - 3. Teachers;
 - 4. Such other personnel employed by the institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the Budget and Control Board;
 - 5. Other positions as the General Assembly may elect to exempt.

The compensation of employees in positions in the category of Unclassified Other is governed by Section 19-706.04 D.

19-706.02 STATEMENTS OF POLICY

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the unclassified State titles and compensation of employees in unclassified positions.
- B. The Office of Human Resources shall develop and maintain a position numbering system that will identify each unclassified position.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head’s salary range or the

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agency head's actual salary, whichever is greater, except on approval of the Budget and Control Board. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.

- D. All pay actions which require approval from OHR must receive such approval prior to an agency effecting the actions.
- E. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- F. All employees in unclassified positions with State salary ranges shall be paid within their respective range and the provisions of Section 19-706.
- G. An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee may be granted any legislative increases made during the employee's absence. In determining the amount of adjustment that the employee may be granted, the same implementation instructions that applied to all other employees in the same unclassified category shall be followed.
- H. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized FTEs. (*Refer to Section 19-704.08.*)
- I. When an employee moves from a classified position to an unclassified position, the employee's pay will be governed by the unclassified pay plan.
- J. The Office of Human Resources is authorized to delegate to agencies by written agreement the establishment of unclassified positions within authorized limits and changes to the unclassified State title. Agencies with a delegation agreement shall comply with State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- K. An agency's requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- L. An agency shall maintain documentation appropriate for administration of these Regulations.
- M. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.
- N. The State Human Resources Director shall have the authority to make exceptions to Section 19-706.

19-706.03 ADMINISTRATION OF THE PAY PLAN

- A. The Office of Human Resources will coordinate with agencies to develop, implement, and maintain unclassified State titles which appropriately identify and distinguish between unclassified positions.

- B. An unclassified position should be authorized by the General Assembly and established by OHR. When establishing an unclassified position, OHR assigns a position number, unclassified State title and code, slot number, and State salary range, if applicable.
- C. The Office of Human Resources has the authority to designate a classified position as unclassified for purposes of initially placing positions in the Executive Compensation System.
- D. The Office of Human Resources may, as appropriate, conduct studies of unclassified positions with State salary ranges for the purpose of making recommendations that will maintain a competitive pay plan.
- E. The State Human Resources Director is authorized to approve pay actions outside the provisions of Section 19-706 for employees other than agency heads if circumstances warrant such approval.

19-706.04 HIRING SALARIES, SALARY INCREASES, AND SALARY DECREASES FOR EMPLOYEES IN UNCLASSIFIED POSITIONS

A. Agency Heads Covered by the Agency Head Salary Commission

The compensation of agency heads covered by the Agency Head Salary Commission is governed by the Commission and the Budget and Control Board.

B. Executive Compensation System

1. Hiring Salaries for Employees in the Executive Compensation System

- a. Hiring at the Minimum - An employee must be paid at least the minimum of the State salary range for the position.
- b. Hiring Above the Minimum – An employee may be hired at a salary up to the midpoint of the State salary range for the position if circumstances warrant such approval. The Budget and Control Board may authorize payment of a salary above the midpoint of the State salary range for the position based on written justification submitted by the agency.
- c. Entry into the Executive Compensation System - Upon movement into the new position, the employee is eligible for up to a 15% salary increase or up to the midpoint of the State salary range for the new position, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Budget and Control Board may authorize exceptions based on written justification submitted by the agency.

2. Salary Increases for Employees in the Executive Compensation System

- a. Written justification for awarding salary increases shall be maintained by the agency.
- b. In-Range Increases
 - (1) Legislative Increase – An annual pay increase shall be provided to the Executive Compensation System employees in accordance with the provisions of the annual Appropriation Act.
 - (2) Performance Increase - An agency may increase an employee's salary based upon performance in accordance with Section 8-1-160 of the South Carolina Code of Laws. Such an increase shall be determined by the agency. A performance increase shall not place an

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employee's salary above the maximum of the State salary range.

c. Salary Increases Upon Promotion

- (1) Upon promotion, an employee's salary must be at least the minimum of the State salary range for the position to which promoted.
- (2) Upon promotion, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range for the position to which promoted, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Budget and Control Board may authorize exceptions based on written justification submitted by the agency.

d. Salary Increases Upon Upward Reevaluation

- (1) When an occupied position is reevaluated and is assigned a higher State salary range, the employee's salary must be at least the minimum of the new State salary range.
- (2) Upon an upward reevaluation, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range.

3. Salary Decreases for Employees in the Executive Compensation System

a. Written justification for effecting any salary decrease shall be maintained by the agency.

- b. Performance Decrease – An agency may decrease an employee's salary based upon performance in accordance with Section 8-1-160 of the South Carolina Code of Laws. Performance decreases may not place an employee's salary below the minimum of the State salary range. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.

c. Salary Decreases Upon Demotion or Downward Reevaluation

- (1) Voluntary Reason - An employee, who is voluntarily demoted to a position with a lower State salary range or who voluntarily has his position reevaluated to a lower State salary range, may at the discretion of the agency head or his designee, be paid at any salary equal to or below the current salary. However, the salary must be within the lower State salary range, and the employee must sign a written statement indicating agreement to the salary decrease. The signed document with justification should be maintained by the agency.
- (2) Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or an unsatisfactory rating on an EPMS evaluation, has his position reevaluated to a lower State salary range or is demoted to a position with a lower State salary range, may, at the discretion of the agency head, be paid at any salary within the lower State salary range provided the salary is equal to or below the current salary, but must be within the lower State salary range.
- (3) Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reevaluated to a lower State salary range for these reasons, the employee's salary shall not be reduced for a period of one year from the date of the demotion or downward reevaluation unless an

exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the State salary range, whichever is lower. If the employee's salary is allowed to remain above the maximum of the lower State salary range for the position, the employee shall not be eligible for pay increases unless:

- (a) Subsequent pay adjustments establish the maximum of the State salary range above the employee's rate of pay; or
- (b) The employee is subsequently promoted or his position is reevaluated and his current salary is below the maximum of the State salary range for the position.

C. Academic Personnel

1. Hiring Salaries for Employees in the Category of Academic Personnel

Agencies may determine hiring salaries for unclassified employees in the category of academic personnel. Agencies should consider comparable positions and market data for the occupational area when setting initial hiring salaries for employees in this category.

2. Salary Increases for Employees in the Category of Academic Personnel

- a. Agencies shall develop written policies to govern the administration of salary increases for academic personnel in unclassified positions. Written justification for awarding salary increases shall be maintained by the agency.
- b. A legislative increase shall be provided to academic personnel in accordance with the provisions of the annual Appropriation Act.
- c. Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
 - (1) The acquisition of additional skills or knowledge directly related to the job;
 - (2) The assignment of additional job duties or responsibilities;
 - (3) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. An employee shall receive no more than one retention increase in a one-year period;
 - (4) The need to address internal equity or equity with the external market;
 - (5) Promotion to a higher level position - The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or
 - (6) Assignment of higher level job duties or responsibilities as defined by the agency which results in a change in unclassified State title.
- d. As provided in an agency's faculty promotion policy, the agency may develop policies for rank promotions for faculty. Such increases shall be determined by the agency.

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- e. A performance increase may be awarded to an employee in accordance with Section 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.

3. Demotions and Salary Decreases for Employees in the Category of Academic Personnel

Agencies shall develop written policies to govern the administration of salary decreases for academic personnel. Written justification for effecting any salary decrease shall be maintained by the agency.

- a. Performance or Disciplinary Decrease – An agency may decrease an employee’s salary based upon performance or disciplinary reasons. Performance decreases should be based on the results of a performance evaluation. Any salary decrease shall be determined by the agency.
- b. Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. For academic personnel covered by the State Employee Grievance Procedure Act, this decrease in salary is not grievable or appealable if the removal of the duties and subsequent salary decrease occur within six months of the date the salary increase was awarded. (Refer to Section 19-718.)
- c. Demotion and Assignment of Lower Level Responsibilities

- (1) Voluntary Reason - An employee, who is voluntarily demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed upon by the employee and the agency provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

- (2) Involuntary Reason –

- (a) Academic Personnel Covered by the State Employee Grievance Procedure Act

- i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on a performance evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.
- ii. An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head, the employee's salary may not be reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.

- (b) Academic Personnel Exempt from the State Employee Grievance Procedure Act

An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.

4. Administrative Salary Adjustment

Institutions of higher learning may award administrative salary adjustments to unclassified academic personnel during periods of time when they are assigned additional administrative responsibilities related to their role as Dean, Assistant Dean, Associate Dean, or Department Chairman. Administrative salary adjustments are not considered part of the employee's base salary. An agency may award an administrative salary adjustment of up to 15%. For an increase of more than 15% or for an increase related to administrative responsibilities other than those listed above, the agency must submit written justification to OHR for approval.

5. Summer Employment for Academic Personnel of State Institutions of Higher Learning

- a. Summer employment is not considered dual employment, which covers additional compensation earned during an employee's base period of employment. Therefore, summer employment may occur over any specified period of time between May and September of a calendar year.
- b. All institutions of higher learning should develop policies and procedures for governing academic personnel who are teaching summer sessions outside of their base period of employment. Institutions of higher learning should consider comparable positions and market data for the occupational area when determining compensation for summer teaching. The rate of pay should be comparable to the preceding academic year and may not exceed 30% of the employee's annualized salary. Written justification for any exceptions should be submitted to OHR for approval.
- c. Academic personnel shall be compensated at the same rate of pay as the immediately preceding academic year for sponsored research or other activities performed during the summer months (between academic years) which are not related to a regular summer session.
- d. Institutions of higher learning shall maintain records of all agreements pertaining to summer employment.

D. Unclassified Other

1. Unclassified Other (Agency Heads Not Covered By the Agency Head Salary Commission)

Agency heads not covered by the Agency Head Salary Commission shall have their salary established in accordance with the Annual Appropriation Act.

2. Unclassified Other (Teachers)

Agencies shall pay all teachers the appropriate salary provided by the salary schedule of the school district in which the agency is located. Each year, agencies with certified teachers should submit their salary schedule for teachers to OHR for information.

3. Unclassified Other (Non-Teachers)

a. Hiring Salaries for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies may determine hiring salaries for employees in the category of unclassified other (non-teachers). Agencies should consider comparable positions and market data for the occupational area when setting hiring salaries for employees in these unclassified positions.

b. Salary Increases for Employees in the Category of Unclassified Other (Non-Teachers)

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- (1) Written justification for awarding salary increases shall be maintained by the agency.
 - (2) A legislative increase shall be provided to employees in the category of unclassified other (non-teachers) in accordance with the provisions of the annual Appropriation Act.
 - (3) Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
 - (a) The acquisition of additional skills or knowledge directly related to the job;
 - (b) The assignment of additional job duties or responsibilities;
 - (c) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. An employee shall receive no more than one retention increase in a one- year period;
 - (d) The need to address internal equity or equity with the external market;
 - (e) Promotion to a higher level position. The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or
 - (f) Assignment of higher level job duties or responsibilities which results in a change in unclassified State title.
 - (4) A performance increase may be awarded to an employee in accordance with Section 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.
- c. Demotions and Salary Decreases for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies shall develop written policies to govern the administration of salary decreases for employees in the category of unclassified other (non-teachers). Written justification for effecting any salary decrease shall be maintained by the agency.

- (1) Performance Decrease – An agency may decrease an employee’s salary based upon performance in accordance with Section 8-1-160 of the South Carolina Code of Laws. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.
- (2) Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.
- (3) Demotion or Assignment of Lower Level Responsibilities
 - (a) Voluntary Reason - An employee, who is demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed

upon by the employee and the agency provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

(b) Involuntary Reason –

- i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.
- ii. An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head, the employee's salary may not be reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.

19-706.05 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment – The Office of Human Resources is authorized to approve a temporary salary adjustment for an employee in an FTE position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Bonuses – The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Budget and Control Board in the administration of bonus programs.

19-706.06 EFFECTIVE DATES OF SALARY CHANGES

- A. The effective date of all salary changes provided in Sections 19-706.04 and 19-706.05 shall be no earlier than the date the action is approved by the appropriate authority.
- B. Retroactivity

Agencies must comply with constitutional provisions regarding retroactivity.

- C. Concurrent Increases

When general increases and other salary increases are awarded on the same date, the general increase shall be applied prior to any other salary increases.

- D. Budgetary Limitations

In the case of budgetary limitations, OHR may approve exceptions to those salary increases that require approval by OHR regarding the effective date of salary increases based on written justification provided by the agency. Agencies should document internally the need to make exceptions regarding the effective date of salary increases for those increases for which they have approval authority.

19-707 HOURS OF WORK AND OVERTIME

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SCOPE AND PURPOSE

This Regulation governs the hours of work and overtime policies for employees.

19-707.01 HOURS OF WORK

- A. No agency shall have less than a 37.5-hour workweek. Generally, the core hours that an agency shall remain open for business are 8:30 a.m. to 5:00 p.m., Monday through Friday.
- B. The minimum full-time workweek for employees of agencies is 37.5 hours. The agency may vary an employee's work schedule through the use of alternative scheduling strategies including telecommuting to meet the needs and service delivery requirements of the agency.
- C. The agency may require an employee to work additional hours when responsibilities of the agency cannot be accomplished in the normal work hours observed by the agency.
- D. To grant any leave of absence with or without pay, the agency must approve the leave of absence in writing. An employee who is granted leave of absence with or without pay shall be:
 - 1. An employee of the State while on such leave; and
 - 2. Returned to the same position, or one in a comparable pay band for which the employee is qualified.

(Note: For information on an employee on approved leave when a reduction in force occurs, refer to Section 19-719.04. For information on an employee on approved leave qualifying under the Family Medical Leave Act (FMLA), refer to FMLA.)

- E. Any leave of absence must be approved in advance except in case of medical or personal emergencies. These situations must be justified to the agency head or his designee for approval.
- F. Each agency is required to keep an accurate record of all employee's scheduled hours of work and leave taken. Leave shall be recorded in the appropriate categories and shown as either leave with or without pay. The agency head has the ultimate responsibility for the accuracy and proper maintenance of hours of work and leave records.

19-707.02 OVERTIME - COMPENSATORY TIME

- A. The Office of Human Resources (OHR) develops an overtime model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's overtime policy.
- B. Each agency shall develop an overtime policy and establish procedures that will ensure compliance with federal and state laws, including the Fair Labor Standards Act (FLSA).
- C. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.
- D. For overtime purposes the two categories of employees are: (1) nonexempt (overtime provisions of FLSA do apply) and (2) exempt (overtime provisions of FLSA do not apply). The exempt or nonexempt status of any employee must be determined by the agency based on the provisions of FLSA. It is the responsibility of the agency head or his designee to determine whether an exemption is applicable to a particular employee.

- E. Workweek is seven consecutive 24-hour periods, i.e., 168 consecutive hours designated by the employing agency. The workweek may begin at any particular time of day and any day of the week.

Exception - In the case of law enforcement personnel or fire protection and emergency medical personnel, these categories of employees have work schedules up to 28 consecutive 24-hour periods, i.e., 672 consecutive hours designated by the employing agency.

- F. Hours worked are all hours that an employee is permitted to work for the employing agency. Hours worked include time during which an employee is necessarily required to be on the employing agency's premises, on duty, or at a prescribed work place. Hours worked do not include leave with or without pay or holidays when an employee does not actually work.
- G. Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period as determined by the employing agency. The Fair Labor Standards Act contains special provisions for determining when overtime is earned by employees in certain job categories. These categories include:
1. Fire protection and emergency medical personnel;
 2. Law enforcement (including security personnel in correctional institutions);
 3. Hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the disabled that reside on the premises; and
 4. Employees who are compensated for overtime using the fluctuating workweek method of payment for overtime as defined by FLSA which must be approved by OHR prior to implementation.
- H. Generally a nonexempt employee should not incur overtime; however, overtime may be permitted when authorized by the agency.
- I. Compensatory time is an acceptable alternative to overtime compensation for employees.
1. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time, and exempt employees shall not be paid for unused compensatory time.
 2. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time at a rate of compensation not less than the higher of:
 - a. The average regular rate received by such employee during the last three years of the employee's employment, or
 - b. The final regular rate received by such employee.
- J. Nonexempt Employee Procedures

1. Payment for Overtime

Nonexempt employees shall either be paid or given compensatory time for hours worked in excess of 40 hours in a given work period of seven consecutive days. For hours worked in excess of 40 in an established workweek of seven consecutive days, payment for overtime or the accrual of compensatory time shall be at the rate of time and one-half the employee's regular rate, computed on the basis of a 40-hour workweek. (*Refer to Exceptions in Section 19-707.02 G.*)

2. Compensatory Time

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- a. A nonexempt employee engaged in public safety work, emergency response work, or seasonal work may not accumulate more than 480 hours of compensatory time. Any employee who has accumulated 480 hours of compensatory time shall be paid overtime for additional hours of work.
- b. A nonexempt employee engaged in work other than public safety work, emergency response work, or seasonal work, may not accumulate more than 240 hours of compensatory time. Any employee who has accumulated 240 hours of compensatory time shall be paid overtime for additional hours of work.

3. Recordkeeping for Nonexempt Employees

Each agency must maintain the following information for nonexempt employees.

- a. Name;
- b. Social security number;
- c. Home address;
- d. Date of birth if under 19 years of age;
- e. Gender and occupation;
- f. Employee workweek, including time of day and day of week on which the employee's workweek begins;
- g. Regular hourly rate of pay for any week when overtime is worked and overtime pay is due;
- h. Hours worked each workday and total hours worked each week;
- i. Total daily or weekly straight-time wages for all hours worked;
- j. Total overtime excess compensation for the workweek;
- k. Total additions or deductions from wages each pay period;
- l. Total wages paid each pay period;
- m. Date of payment and pay period covered;
- n. The number of hours of compensatory time earned each workweek, or other applicable work period, by each employee at the rate of 1 1/2 hours for each overtime hour worked;
- o. The number of hours of such compensatory time used each workweek or other applicable work period by each employee; and
- p. The number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment.

K. Exempt Employee Procedures

1. No Payment for Overtime

Exempt employees shall not be paid overtime.

2. Compensatory Time

If allowed by an agency's overtime policy, exempt employees may receive compensatory time for hours worked in excess of 40 in the workweek. If granted, compensatory time must not be at a rate greater than one hour of compensatory time for each hour worked in excess of 40 in the workweek.

L. Employment at More Than One State Agency

When a nonexempt employee is employed at more than one State agency, each employing agency shall calculate separately the hours worked by the employee. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purpose of applying FLSA; therefore, the agencies where the individual is employed should jointly determine whether such a nonexempt employee is owed any overtime compensation during a workweek. *(For information on dual employment, refer to Section 19-713.)*

M. Volunteers

Time spent as a volunteer is not included in hours worked. An employee may volunteer services for an agency or a political subdivision of the State, if a) the individual does not receive compensation, paid expenses, benefits, or a nominal fee for services for which the individual volunteered, and b) such services are not the same type of services which the individual is employed to perform for such public agency. An employee of a public agency which is a state, political subdivision of a state, or an interstate governmental agency may volunteer services for any other state, political subdivision, or interstate governmental agency including a state, political subdivision or interstate governmental agency with which the employing agency has a mutual aid agreement.

19-708 HOLIDAYS

SCOPE AND PURPOSE

This Regulation governs the observance of holidays by employees in full-time equivalent (FTE) positions.

19-708.01 ELIGIBILITY

All employees in FTE positions shall be allowed to observe with pay those holidays listed in Section 19-708.02.

19-708.02 LEGAL HOLIDAYS

A. State Holidays

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
George Washington's Birthday/President's Day	Third Monday in February
Confederate Memorial Day	May 10

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National Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas Day	December 25
Day after Christmas	December 26

B. Holidays Declared by the Governor

The Governor is empowered to declare Christmas Eve of each year a holiday for State employees. If the Governor declares Christmas Eve a holiday in a year that Christmas Eve falls on Saturday or Sunday, the holiday shall be observed on the preceding Friday.

19-708.03 HOLIDAY OBSERVANCE PROCEDURE

- A. Holidays are to be taken on the prescribed day unless the agency requires the employee to work. The agency shall give employees who must work on holidays prior notice if possible.
- B. When a holiday falls on a Saturday or Sunday, it shall be observed on the preceding Friday or the following Monday, respectively, by employees working a Monday through Friday schedule. Employees scheduled to work on a Saturday or Sunday that is a holiday shall observe the actual holiday or receive holiday compensatory time in accordance with Section 19-708.04.
- C. Employees in FTE positions who do not work a normal Monday through Friday workweek shall receive no more nor any fewer number of holidays than those employees who work the normal Monday through Friday workweek.
- D. The length of an employee's holiday is computed based on the number of hours in the employee's average workday. To determine the number of hours in a holiday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).
- E. When a holiday falls during a period of leave with pay, that day will be counted as a holiday, not as a day of leave.
- F. Employees who are on leave without pay shall not be paid or receive holiday compensatory time for holidays falling during this period of leave without pay.
- G. The holiday schedules of public colleges and universities, including technical colleges, shall not be in violation of this Section so long as the number of holidays provided in this Section are not exceeded.

19-708.04 HOLIDAY COMPENSATORY TIME

- A. An employee, except an employee of an agency following a academic schedule, who is required by the

agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency in which employed within 90 days of such holiday.

- B. An employee of an agency which follows an academic schedule who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency in which employed within one year from the date of the holiday.
- C. An employee who must work a portion of the holiday due to a shift that begins on one day and ends on another shall be granted holiday compensatory time equal to all hours worked on the holiday.
- D. All nonexempt employees who are not allowed to take holiday compensatory time earned for working on a holiday within the 90-day period, or the one-year period in the case of employees who follow academic schedules, shall be compensated for the holiday by the employing agency at the straight hourly pay rate of the employee. Exempt employees shall not be paid for unused holiday compensatory time. An agency may submit a request to the Office of Human Resources (OHR) for an extension for an additional 90 days because of limited staffing.
- E. All nonexempt employees shall be compensated for all holiday compensatory time upon separation from employment. Exempt employees shall not be paid for unused holiday compensatory time upon separation of employment.
- F. **Holiday Compensatory Time Records**

Records shall be maintained for all employees who receive holiday compensatory time. Information contained in the record must include:

- 1. Compensatory time earned and used in terms of hours; and
- 2. The number of hours per week the employee is normally scheduled to work and the employee's average workday.

19-709 ANNUAL LEAVE

SCOPE AND PURPOSE

This Regulation governs the annual leave policies for employees in full-time equivalent (FTE) positions.

19-709.01 ELIGIBILITY

- A. Annual leave shall be earned by and granted to:
 - 1. Full-time employees in FTE positions, and
 - 2. Part-time employees in FTE positions who are:
 - a. Scheduled to work at least one-half the workweek of the agency on a 12 month basis, or
 - b. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.
- B. This Regulation shall not apply to teaching personnel and officials of academic rank at institutions of higher learning.

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19-709.02 ANNUAL LEAVE EARNINGS

A. Computation

1. Employees who are in pay status one-half or more but not all of the workdays of the month shall earn annual leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no annual leave.
2. Employees shall earn annual leave while on annual leave, sick leave, or other authorized leave with pay. Employees shall not earn annual leave while on leave without pay.
3. Employees' annual leave earnings are computed based on the number of hours in the employee's workday.
4. Employees' annual leave earnings are based on the employee's leave accrual date. The leave accrual date reflects:
 - a. All State service in an FTE position, including part-time service, adjusted to reflect periods of leave without pay of over 30 consecutive workdays and periods when there was a break in service;
 - b. All service as a certified employee in a permanent position of a school district of this State; and
 - c. At the discretion of the agency head or his designee, all service in any temporary capacity counted towards the employee's probationary period. (*Refer to Section 19-704.02 D. 2.*)

B. Rate of Earnings

1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week
 - a. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).
 - b. Service of Ten Years or Less

Employees on a five-day workweek schedule with service time of less than ten years shall earn annual leave at the rate of $1\frac{1}{4}$ workdays per month of service in each calendar year. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.
 - c. Service of More Than Ten Years

Employees on a five-day per workweek schedule with State service time of more than ten years shall earn a bonus of $1\frac{1}{4}$ workdays of annual leave for each year of service over ten years. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date. The annual leave earnings based upon State service time of over ten years shall be granted to employees on a calendar month basis beginning the month after their leave accrual date.

Chart #1
 Five Days, 37.5 Hours Per Workweek Schedule
 (may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Days Per Year</u>	<u>Earning Rate</u> <u>Hours Per Month</u>
1-10	15.00	9.375
11	16.25	10.156
12	17.50	10.937
13	18.75	11.718
14	20.00	12.500
15	21.25	13.281
16	22.50	14.062
17	23.75	14.843
18	25.00	15.624
19	26.25	16.406
20	27.50	17.187
21	28.75	17.968
22 & over	30.00	18.750

Chart #2
 Five Days, 40 Hours Per Workweek Schedule
 (may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Days Per Year</u>	<u>Earning Rate</u> <u>Hours Per Month</u>
1-10	15.00	10.000
11	16.25	10.833
12	17.50	11.666
13	18.75	12.500
14	20.00	13.333
15	21.25	14.167
16	22.50	15.000
17	23.75	15.833
18	25.00	16.667
19	26.25	17.500
20	27.50	18.333
21	28.75	19.167
22 & over	30.00	20.000

2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

All employees earn the number of days per year based on their years of service. However, the earning rate in hours per month varies according to the length of the workday. If the workday differs from eight hours, divide the number of hours in the workday by eight, then multiply this ratio by the earnings rate in the last column of Chart #2 above. Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three

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hours divided by five equals a workday of 10.6 hours;

- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

C. Maximum Accrual and Carryover

1. Employees shall be permitted to carryover from one calendar year to the next any unused annual leave up to a total accumulation of 45 workdays; EXCEPT THAT, employees of an agency which provided for maximum accumulation in excess of 45 workdays as of June 2, 1972, shall not forfeit the excess, but shall retain excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the annual leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 45 workdays as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

19-709.03 USING AND SCHEDULING ANNUAL LEAVE

A. Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

B. Scheduling Leave

1. To the degree possible, an employee's request for a specific period of annual leave shall be approved. Agencies may consider workloads and similar factors when reviewing the requests.
2. Agency approval is required for the specific periods the employee shall be on annual leave, to include beginning and ending dates and computation of total hours.

C. Maximum Days Used Per Year

1. The maximum number of earned days of annual leave that may be used in any one calendar year shall not exceed 30 workdays.
2. Exception

- a. For Family and Medical Leave Act qualifying reasons, an agency may allow an employee who has used all eligible sick leave and 30 days of annual leave to use any remaining annual leave for:
 - (1) Emergencies or serious health conditions of the employee;
 - (2) Emergencies or serious health conditions of the employee's immediate family. (Immediate family is defined in Section 19-710.04 B. 6.)
- b. An employee may request review by the State Human Resources Director the denial of the use of annual leave as provided in this Section.

D. Increments for Use of Annual Leave

Use of annual leave shall be calculated at either the actual time or in quarter hour increments.

E. Holiday During Leave

When a holiday is observed by the agency while an employee is using annual leave, the day shall be considered a holiday, not a day of annual leave for the employee.

19-709.04 TRANSFER FROM ONE STATE AGENCY TO ANOTHER

- A. An employee who transfers without a break in service from one agency to another shall transfer earned annual leave.
- B. When a full-time employee transfers to an agency that has a different workday, his annual leave at the transferring agency shall be converted to equivalent days of annual leave at the receiving agency.
- C. When an employee transfers from a position in which he earns both sick and annual leave to a teaching position of academic rank at a State supported institution of higher learning, the employee shall be paid for earned annual leave according to Section 19-709.06.
- D. When the employee with a maximum carryover in excess of 45 workdays transfers from one agency to another, the employee shall retain the higher maximum carryover at the receiving agency. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, the employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

19-709.05 PAYMENT UPON SEPARATION FROM EMPLOYMENT

Upon separation from State employment, a lump sum payment will be made for unused annual leave, not to exceed 45 days, unless a higher maximum is authorized under Section 19-709.02 C., and without deducting any earned leave taken during the calendar year in which the employee separates. Upon the death of an employee while in active service, the estate of the deceased employee shall be entitled to the lump sum payment not to exceed 45 days.

Exception - Refer to Section 19-719.01 B. 2. (Exceptions).

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19-709.06 RECORDS

- A. The agency shall maintain all annual leave records for each employee eligible for annual leave. Such records must include at least the following:
1. The annual leave accrual rate for each employee;
 2. The number of annual leave hours earned and used during the current calendar year;
 3. The number of annual leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized;
 4. The number of hours in the employee's workweek and workday; and
 5. The number of hours paid out upon separation.
- B. Annual leave records shall be reviewed by or reported in writing to the employee no less than once per calendar year and be supported by the individual leave forms signed by the employee and the agency designee.

19-710 SICK LEAVE

SCOPE AND PURPOSE

This Regulation governs the sick leave policies for employees in full-time equivalent (FTE) positions.

19-710.01 ELIGIBILITY

Sick leave shall be earned by and granted to:

- A. Full-time employees in FTE positions, and
- B. Part-time employees in FTE positions who are:
1. Scheduled to work at least one-half the workweek of the agency on a 12 month basis, or
 2. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.

19-710.02 SICK LEAVE EARNINGS

A. Computation

1. Employees who are in pay status for at least one-half or more of the workdays of the month shall earn sick leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no sick leave.
2. Employees shall earn sick leave while on sick leave, annual leave, or other authorized leave with pay. Employees shall not earn sick leave while on leave without pay.
3. Employees' sick leave earnings are computed based on the number of hours in the employee's workday.

B. Rate of Earnings

1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week

All employees in FTE positions shall earn sick leave beginning with the date of employment at the rate of $1\frac{1}{4}$ workdays per month of service or 15 days per year. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work).

2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

To calculate the sick leave earnings for employees working schedules other than a five-day workweek of 37.5 or 40 hours per week (including part-time, variable, and nonstandard work schedules), the agency must determine what a workday is for each such employee. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work). Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three hours divided by five equals a workday of 10.6 hours;
- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

C. Maximum Accrual and Carryover

Full-time and part-time employees in FTE positions shall be permitted to earn up to 195 workdays. Full-time and part-time employees in FTE positions shall carryover from one calendar year to the next any unused earned sick leave up to a total maximum carryover of 180 workdays.

Exceptions

1. Any employee, who prior to January 1, 1969, earned and carried over unused sick leave in excess of 180 workdays pursuant to the agency's policy existing at the time, shall not forfeit the excess, but shall retain such excess leave which shall become the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover; or
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the sick leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 180 workdays, as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 180 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 180 workdays or less, 180 workdays shall

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become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn sick leave in excess of 180 workdays; however, an employee may only carry over 180 days into the next year.

19-710.03 ADDITIONAL SICK LEAVE MAY BE GRANTED

- A. An agency may advance up to 15 workdays of additional sick leave to an employee in extenuating circumstances.
- B. The agency may advance this leave only upon written verification from a health care practitioner that the employee is expected to return to work within that period of time.
- C. Upon return to work, the employee will have all earned sick leave applied to the leave deficit at the rate of 1¼ days per month (or if part-time, the monthly earning rate) until the deficit has been eliminated.

19-710.04 USING AND SCHEDULING SICK LEAVE

- A. Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.
- B. Reasons an employee shall be allowed to use sick leave are as follows:
 - 1. Personal illness or injury that incapacitates the employee to perform duties of the position;
 - 2. Exposure to a contagious disease such that presence on duty could endanger the health of fellow employees;
 - 3. Appointment for medical or dental examination or treatment when such appointment cannot reasonably be scheduled during nonwork hours;
[Note: if possible, examination appointments must be approved in advance by the agency designee.]
 - 4. Sickness during pregnancy or other temporary disabilities;
[Note: If possible, the date on which sick leave for disability is to begin shall be at the request of the employee based on the determination and advice of a health care practitioner.]
 - 5. Treatment for alcoholism;
[Note: In accordance with Section 8-11-110 of the South Carolina Code of Laws which recognizes alcoholism as a treatable illness, sick leave will be granted for the purpose of participating in public and private treatment and rehabilitation programs which have been approved by the South Carolina Department of Mental Health.]
 - 6. Caring for ill members of immediate family;
[Note: Employees earning sick leave as provided in Section 19-710 may use not more than eight days of sick leave annually to care for ill members of their immediate families. For purposes of this eight days of sick leave, the employee's "immediate family" means the employee's spouse and children and the following relations to the employee or the spouse of the employee: mother, father, brother, sister, grandparent, legal guardian, and grandchildren if the grandchild resides with the employee and the employee is the primary caretaker of the grandchild.]
 - 7. Caring for an adoptive child;
[Note: An adoptive parent who is employed by this State, its departments, agencies, or institutions may use up to six weeks of his earned sick leave to take time off for purposes of caring for the child after placement. The agency shall not penalize an employee for requesting or obtaining time off

according to this Section. The leave authorized by this Section may be requested by the employee only if the employee is the person who is primarily responsible for furnishing the care and nurture of the child.]

C. Verification

The use of sick leave shall be subject to verification. The agency designee may, before approving the use of sick leave, require the certificate of a health care practitioner verifying the need for sick leave and giving the inclusive dates.

D. Increments for Use of Sick Leave

Use of sick leave shall be calculated at either the actual time or in quarter hour increments.

E. Use of Sick Leave Before Going on Leave Without Pay

In qualifying sick leave situations, the employee shall use all sick leave before going on leave without pay unless the agency head or his designee grants an exception at the employee's request.

F. Holiday During Sick Leave

When a holiday is observed by the agency while an employee uses sick leave, the day shall be considered a holiday, not a day of sick leave for the employee.

19-710.05 TRANSFER

A. Between State Agencies

An employee who transfers without a break in service from one State agency to another shall transfer his earned sick leave. Any transferred sick leave shall be adjusted to the scheduled workweek of the receiving agency. In the case of an employee transferring from an agency under whose system the employee has, prior to January 1, 1969, a maximum accumulation in excess of that currently authorized by the receiving agency, the total sick leave balance shall be transferred. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover.

B. Between A State Agency and School District

An employee of a State agency transferring to a school district of the State or a school district employee transferring to a State agency is permitted to transfer to and retain at his new employer all sick leave he earned at his former employer regardless of his employment status at the new employer.

19-710.06 SEPARATION FROM EMPLOYMENT

Upon separation from employment, an employee shall forfeit all earned sick leave.

A. Retirement - An employee shall receive service credit for no more than 90 days of his unused sick leave at no cost to the employee. The leave must be credited at a rate where 20 days of unused sick leave equals one month of service. This additional service credit may not be used to qualify for retirement.

B. Reduction in Force Rights - An employee who is reinstated within one year of the date of separation shall have his sick leave restored. *(Refer to Section 19-719.04 B. 4. d.)*

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- C. Up to Six Month Exception to Break in Service - An employee who has received prior approval for an extension to the 15-day break in service shall have his sick leave restored if transferred or appointed to another FTE position within the approved time period. *(Refer to Section 19-719.01 B. 2. (Exception).)*

19-710.07 RECORDS

- A. The agency shall maintain all sick leave records for each employee eligible for sick leave. Such records must include at least the following:
1. The number of sick leave hours earned and used during the current calendar year;
 2. The number of sick leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized; and
 3. The number of hours in the employee's workweek and workday.
- B. Sick leave records shall be reviewed by or reported in writing to the employee no less than once per calendar year and be supported by individual leave forms signed by the employee and the agency designee.

19-711 LEAVE TRANSFER PROGRAM

SCOPE AND PURPOSE

This Regulation governs the manner in which employees may voluntarily donate sick or annual leave into a leave transfer pool for use by other employees, who have been approved as leave recipients under personal emergency circumstances.

19-711.01 AGENCY RESPONSIBILITY

- A. Each agency shall establish two separate leave transfer pool accounts, a sick leave transfer pool and an annual leave transfer pool.
- B. Records and Forms

Each agency shall maintain the following records:

1. Donation Request Form - The Donation Request Form shall include:
 - a. The employee's name;
 - b. The employing agency;
 - c. The employee's State title;
 - d. The employee's hourly rate of pay;
 - e. The number of days/hours of the leave donor's earned sick or annual leave;
 - f. The number of days/hours of sick or annual leave the employee wishes to donate to the appropriate leave transfer pool;
 - g. The date of the donation; and

- h. The leave donor's signature.
- 2. Recipient Request Form - The Recipient Request Form shall include:
 - a. The employee's name;
 - b. The employing agency;
 - c. The employee's State title;
 - d. The employee's hourly rate of pay; and
 - e. A brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the employee.
- 3. Leave Restoration Form - The Leave Restoration Form shall include:
 - a. The name of the leave recipient;
 - b. The type of leave transferred (sick or annual);
 - c. The amount of transferred leave used;
 - d. The date the leave recipient's personal emergency or employment terminates; and
 - e. The amount of transferred leave (sick or annual) being restored to the respective pool.

19-711.02 ANNUAL REPORTING

Each agency having any donation or approved requests for leave transfer in a calendar year shall submit the following information to the Office of Human Resources (OHR):

- A. Sick Leave - Total hours and cost of:
 - 1. Sick leave donated;
 - 2. Sick leave used by recipient(s); and
 - 3. Sick leave restored, if any.
- B. Annual Leave - Total hours and cost of:
 - 1. Annual leave donated;
 - 2. Annual leave used by recipient(s); and
 - 3. Annual leave restored, if any.
- C. Any additional information requested by OHR needed to evaluate the desirability, feasibility, and cost of the leave transfer program.

19-711.03 ELIGIBILITY TO DONATE

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- A. An employee donating sick or annual leave to either the sick or annual leave transfer pool must do so prior to the end of the calendar year.
- B. An employee may donate no more than one-half of the sick or annual leave he earns within a calendar year to the appropriate pool leave account for that calendar year.
- C. An employee's leave, once transferred to a pool account, must not be restored or returned to the leave donor.
- D. Sick Leave - An employee with more than 15 days in his sick leave account may transfer sick leave to the agency's sick leave pool if he retains a minimum of 15 days in his own sick leave account. An employee with less than 15 days in his sick leave account may not transfer any sick leave to the agency's sick leave pool.
- E. Annual Leave - An employee may voluntarily request by completing the employing agency's Donation Request Form, that a specified number of hours of his earned annual leave be transferred from his annual leave account to his employing agency's annual leave transfer pool.

19-711.04 REQUEST FOR LEAVE

An employee with a personal emergency may request sick or annual leave from the appropriate pool account by completing the employing agency's Recipient Request Form. While there is no limit to the number of separate requests that an employee may submit to the employing agency, each separate request shall be limited to no more than 30 workdays.

19-711.05 LEAVE APPROVAL

Under guidelines established by the Budget and Control Board, the agency head of the employing agency may, upon receiving a completed request, review all necessary information and approve recipients from within the agency to participate in the leave transfer program. Unless the personal emergency involves a medical condition affecting the leave recipients, the employing agency may consider the likely impact on morale and efficiency within the agency in approving a leave recipient to use transferred leave.

19-711.06 NO ADMINISTRATIVE OR JUDICIAL APPEAL

The decisions of the agency head of the employing agency are final, and there is no administrative or judicial appeal of the decisions.

19-711.07 USE OF SICK OR ANNUAL LEAVE

- A. Leave taken under this Section may qualify for the Family Medical Leave Act (FMLA) and, if so, will run concurrently.
- B. Under guidelines established by the Budget and Control Board, the employing agency may transfer all or any portion of the sick leave in the pool account to the sick leave account of the leave recipient, and all or any portion of the annual leave in the pool account to the annual leave account of the leave recipient.
- C. Upon approval of a request, an employee may use sick or annual leave from the appropriate pool account in the same manner and for the same purposes as if the employee had earned the leave in the manner provided by law.

- D. Sick or annual leave earned by the leave recipient must be used before using any leave from a leave transfer pool.
- E. Sick or annual leave transferred under this program may be substituted retroactively for periods of leave without pay or used to liquidate indebtedness for advanced sick leave.

19-711.08 WHEN PERSONAL EMERGENCY TERMINATES

- A. The personal emergency affecting a leave recipient terminates when either the employing agency determines that the personal emergency no longer exists or either the leave recipient separates from employment.
- B. The employing agency shall monitor continuously the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred sick or annual leave from a pool account after the personal emergency terminates.
- C. When the personal emergency terminates, the employing agency may not grant further requests for transfer of leave to the leave recipient's leave account. When the personal emergency affecting a leave recipient terminates, any transferred sick or annual leave remaining must be restored to the appropriate pool account by completing a Leave Restoration Form.

19-711.09 SEPARATION FROM EMPLOYMENT

Transferred sick or annual leave from a pool account remaining when the leave recipient separates from employment must be restored to the appropriate pool account by the completion of a Leave Restoration Form. Upon separation from employment, transferred leave from a pool account must not be transferred to another employee, included in a lump sum payment for earned leave, or included in the leave recipient's total service for retirement computation purposes.

19-712 OTHER LEAVE PROGRAMS

SCOPE AND PURPOSE

This Regulation governs the leave programs, other than annual and sick leave and holidays.

19-712.01 OTHER LEAVE TYPES

Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

A. Administrative Leave

A full-time employee in a full-time equivalent (FTE) position who is temporarily disabled as a result of an assault by an inmate, patient, or client must be placed on administrative leave with pay by his employing agency rather than his earned sick leave. The period of administrative leave per incident may not exceed 180 calendar days. Denial of the use of administrative leave by the agency will be grounds for review by the Office of Human Resources (OHR) upon request of the employee. Administrative review by OHR will be final.

B. Adoption Leave – (Refer to Section 19-710.04 B. 7.)

C. American Red Cross Certified Disaster Service Leave

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An employee who is a certified disaster service volunteer for the American Red Cross may use up to 10 days of paid leave in a calendar year to participate in specialized disaster relief services with the approval of the agency designee.

D. Blood Drive and Donation Leave

1. Agencies may periodically arrange volunteer blood drives for their employees. The blood drives may be held at the times and places as may be determined by the agency head. The agency's employees are permitted to participate in the blood drive during their work hours without using sick and annual leave.
2. An employee desiring to donate blood at a time, other than an agency arranged volunteer blood drive, must be excused from work by his agency during the employee's regular work hours for the purpose of making the donation without prejudice to the employee and no leave or makeup time may be required. Any employee desiring to donate blood as provided in Section 8-11-175 of the South Carolina Code of Laws shall notify his agency of the scheduled donation and the amount of time needed for the donation as far in advance as may be practicable. The agency may deny the employee's request for time to donate if the absence of the employee would create an extraordinary burden on the agency. In considering the employee's request, the agency shall take into consideration such factors as the necessity and type of blood donation, and any other factor the agency considers appropriate. The agency may, as condition of approving the request, require the employee to provide documentation of the donation.

E. Bone Marrow Donor Leave

An employee who works an average of 20 hours or more a week and who seeks to undergo a medical procedure to donate bone marrow may be granted bone marrow donor leave with pay. The total amount of paid leave may not exceed 40 work hours unless a longer length of time is approved by the agency head. Such leave may require verification by a health care practitioner of the purpose and length of each request. If a medical determination finds that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee before that medical determination is not forfeited.

F. Court Leave

1. Jury Duty (With Pay)

- a. An employee, who is summoned as a member of a jury panel, shall be granted court leave with pay. Any jury fees and travel payment shall be retained by the employee. This court leave with pay shall not apply to agencies whose employees are exempt from jury duty by law.
- b. An employee, who is excused from jury duty and was not required to be at court the number of hours equal to the employee's workday, is required to return to the job according to arrangements between the employee and the agency designee. The employee must be on authorized leave for any time the employee is excused from jury duty and does not return to work.
- c. An employee who is summoned to jury duty will be required to work on any given day only the number of hours that equal the employee's work schedule, minus the hours required to be at court.

2. Subpoenaed As a Witness (With Pay)

An employee, who is subpoenaed as a witness and who will not receive any personal gain from the

outcome of the litigation, shall be entitled to court leave with pay for those hours required for the subpoena and may retain any witness fee and travel expenses.

3. Exceptions

- a. An employee engaged in personal litigation is not eligible for court leave with pay, but may be granted annual leave or leave without pay with appropriate authorization.
- b. When an employee is subpoenaed to represent an agency as a witness or defendant, his appearance is considered a part of the employee's job assignment. The employee shall be reimbursed for any meals, lodging, and travel expenses that may be incurred according to State Travel Guidelines as provided in the annual Appropriation Act and Budget and Control Board Regulations.
- c. When an employee attends, in an official capacity, a mediation or mediation-arbitration conference, his attendance is considered a part of the employee's job assignment.
- d. When an employee appears as a witness or in any other official capacity in a hearing before the State Employee Grievance Committee, his appearance is considered a part of the employee's job assignment.

G. Death in Immediate Family Leave

- 1. An employee, upon request, shall be granted up to three consecutive workdays of leave with pay on the death of any member of the employee's immediate family. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, brothers, sisters, children, grandchildren, great-grandchildren of either the employee or the spouse.
- 2. An employee requesting leave for a death in the immediate family shall submit a statement to the appropriate authority stating the name of the deceased and the relationship to the deceased.

H. Educational Leave

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours and the agency cannot feasibly adjust the work schedule of the employee, the employee may be allowed to take annual leave or may be granted leave without pay in order to attend classes.

I. Extended Disability Leave

Under the Americans with Disabilities Act (ADA), certain extended illnesses may be protected as disabilities and may require reasonable accommodation.

- 1. For any extended period of certified disability due to illness, injury, or maternity, an employee may request leave not to exceed (1) 180 workdays of leave with pay, or (2) 180 calendar days of combined leave with pay and leave without pay.
- 2. The agency shall require, prior to approval of an extended disability, certification by the health care practitioner to include: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and (3) appropriate medical facts within the knowledge of the health care practitioner regarding the condition. Dates set forth in the health care practitioner's

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certificate may be amended. The agency may require additional documentation from the health care practitioner issuing the certificate or may secure additional medical opinions from other health care practitioners.

3. An agency may not deny an employee's request for the 180-day disability leave for bona fide illness or disability if the employee is in an FTE position.
4. Should the employee return within the approved 180-day period, the agency shall reinstate the employee to the same position or one of a comparable pay band for which the employee is qualified.
5. If the employee is unable to return within the 180-day period, the agency must separate the employee from State service.
6. In extenuating circumstances, two extensions are available:
 - a. The agency head may extend the 180-day period of leave to a total of 365 days provided the health care practitioner certifies the employee's return within this time period; and
 - b. The agency head may request from OHR an extension of the disability leave beyond the 365 days without a break in service provided the health care practitioner certifies the employee's return to work within the time frame of the requested extension.

J. Family and Medical Leave Guidelines

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations.

1. Eligibility and Reasons for FMLA Leave

- a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours, and is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site.
 - (1) In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept. Otherwise, an exempt employee is presumed to have met the 1,250 hours of service.
 - (2) State government is considered a single employer for the purpose of determining FMLA leave.
- b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:
 - (1) For the birth of a son or daughter and to care for that child;
 - (2) For placement of a son or daughter for adoption or foster care with the employee;
 - (3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition; and
 - (4) For a serious health condition that makes the employee unable to perform the functions of

the employee's job.

Note: Eligibility for Reasons A. and B. expires 12 months after the date of the birth or placement.

2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require that an employee's request for FMLA leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition, be supported by a certification issued by the health care practitioner.

3. Use of FMLA Leave

The agency is responsible for declaring leave as FMLA leave based on information provided by the employee.

- a. When the agency designates leave as FMLA leave, it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA.
- b. Use of FMLA leave shall be calculated by either the actual time or in quarter hour increments.
- c. The agency should declare any leave taken that qualifies as FMLA leave. The FMLA leave should run concurrently with any other leave, and the leave should be charged against both leave categories' allowances.

4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

- a. An eligible employee will be required to substitute his accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or
- b. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.

5. FMLA Leave Record

A leave record shall be maintained by the employing agency for each employee subject to the provisions of the FMLA. Such record shall:

- a. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
- b. Indicate the number of FMLA leave hours used in the current calendar year.
- c. Indicate the number of hours in the employee's established workweek.

6. Transfer of FMLA Leave

For an eligible employee who transfers from one agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving agency.

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K. Hazardous Weather and Emergency Leave

1. Upon issuing a Declaration of Emergency, the Governor has the authority to excuse all employees of State government from reporting to work during extreme weather or other emergency conditions. "Emergency conditions" means circumstances that would expose employees to harmful or unsafe conditions as determined by the Governor's Office. Unless such a Declaration of Emergency has been issued, all State government employees are expected to report to work.

Exception - Nothing contained in this Section precludes the necessary immediate evacuation of a facility by an individual in an appropriate supervisory capacity in the interest of personal safety.

2. The Declaration may be applicable to all employees in the entire State, or only to those employees who live or work in one geographical region of the State, or a combination of geographical regions.
3. During a Declaration of Emergency, all essential and direct care services will be maintained. Each agency shall identify essential employees by position, classification, or internal title, and post a list thereof. Generally, no change of the essential employee roster should be authorized after the Governor's Declaration of an Emergency. Nonessential employees will not be expected to report to work.
4. Notification of Declaration of Emergency

- a. Between the Hours of 8:00 a.m. and 5:00 p.m.

- (1) The Declaration of Emergency shall be communicated from the Governor's Office to the State Human Resources Director.

- (2) The State Human Resources Director will communicate the Declaration of Emergency to each agency in accordance with the list of agency representatives to be contacted in the case of an emergency declaration. Each agency will be responsible for submitting to the Office of Human Resources (OHR), in an appropriate form developed by the Office, the designated agency official (and two alternates) to contact in order to ensure the expeditious dissemination of the Declaration of Emergency to all affected agencies. Each agency is responsible for informing the State Human Resources Director when the listing of agency representatives to be notified by OHR is to be revised.

- (3) The Governor's Office will issue a statement to the news media concerning the release of employees due to the emergency.

- b. Between the Hours of 5:00 p.m. and 8:00 a.m.

All Declarations of Emergency will be transmitted by the Governor's Office to the news media. Employees will assume an individual responsibility to respond in an appropriate manner to closings as they may be announced.

5. Compensation During Declaration of Emergency

An employee who does not report to work or who reports late to work shall use annual leave or compensatory time to make up hours scheduled but not worked, take leave without pay, or be allowed to make up the hours at a time to be scheduled by the agency. The employee must be given the option of making up the hours if the employee so desires.

L. Military Leave

1. Short Term Military Training

All officers and employees of this State or a political subdivision of this State, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating, for one or more periods not exceeding an aggregate of 15 regularly scheduled average workdays in any one year during which they may be engaged in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. In the event any such person is called upon to serve during an emergency, he is entitled to such leave of absence for a period not exceeding 30 additional days. Any one year means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders.

2. Long Term Military Leave of Absence

Every employee of the State or any political subdivision thereof who, on or after June 25, 1950, has been, or shall be commissioned, enlisted, or selected for service in the Armed Forces of the United States (excluding short term training) shall, so long as the requirements and regulations of the Armed Forces shall prevent his return to his civil employment for a period of 90 days thereafter, but in no event for a period longer than five years from the date of entry into the Armed Forces of the United States, be entitled to leave of absence from his duties as an employee of the State or any political subdivision thereof, without loss of seniority or efficiency or register ratings. The word "employee" as used herein shall not be construed to mean an officer or official elected or appointed to a term pursuant to a statute or the Constitution of this State.

M. Sabbatical Leave

When provided in statute, an institution of higher learning may establish a policy for a leave of absence for a sabbatical for academic personnel.

N. State Employee Grievances and Appeals Attendance

Refer to Section 19-712.01 F. 3. c. and d.

O. Voting Leave

An employee who lives at such distance from the assigned work location as to preclude voting outside of working hours may be authorized a maximum of two hours of leave with pay for this purpose. To work at the polls during elections, an employee must be on authorized leave.

P. Workers' Compensation Leave

1. If there is an accidental injury arising out of and in the course of employment with the State, which is covered under Workers' Compensation, an employee who is not eligible for or who has exhausted his paid administrative leave, shall make an election to use either earned leave time (sick or annual

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or both) or Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws.

2. The employee shall make an election under one of the following options:
 - a. To use sick leave, annual leave, or both. When earned leave is exhausted before the employee can return to work, the employee shall be entitled to Workers' Compensation benefits at the time leave is exhausted;
 - b. To use Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws, as amended; or
 - c. To use sick leave, annual leave, or both on a prorated basis in conjunction with Workers' Compensation benefits according to the formula approved by the Budget and Control Board.
3. Before the election is made, the effect of each available option on the employee's future leave earnings must be explained to the employee by the employing agency. The election must be in writing and signed by the employee and the person who explains the options. The election of the employee is irrevocable as to each individual incident.
4. Regardless of which option an employee elects, he would continue to be eligible for payment of medical costs provided by the State Accident Fund.

19-712.02 OTHER LEAVE RECORDS

- A. The agency shall maintain all leave records for each employee eligible for such leave. Such records must include the number of leave hours used during the current calendar year.
- B. Leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave forms signed by the employee and the agency designee.

19-713 DUAL EMPLOYMENT

SCOPE AND PURPOSE

This Regulation governs how employees in full-time equivalent (FTE) positions may accept additional temporary, part-time employment with the same or another agency.

19-713.01 STATEMENTS OF POLICY

- A. General Provisions
 1. In accordance with this Regulation, agencies may develop internal dual employment policies.
 2. Dual employment shall be limited in duration to the specific time frame approved which cannot exceed 12 months.
 3. The practice of dual employment should not be used to provide higher continuing salaries than those approved by the Budget and Control Board. An employee engaged in dual employment shall satisfy the requirements of the established hours of work for the employing agency.
 4. No agency head may be dually employed by another agency or institution of higher education without prior approval by the Agency Head Salary Commission and the Budget and Control Board.

B. Approval of Dual Employment

1. The agency heads or their designees of the employing and requesting agencies, or the agency head or his designee when the dual employment is in the same agency, are responsible for approving dual employment requests prior to the beginning of the dual employment relationship.
2. Because the requesting agency is responsible for coordinating dual employment arrangements, the requesting agency will coordinate the approval and any modifications of the dual employment request with the employing agency.
3. The employing agency should process dual employment requests in a timely manner.

C. Scheduling Dual Employment

1. Dual Employment Between Two Agencies

Ordinarily, an employee's work schedule with the employing agency should not be altered or revised to provide time to perform dual employment duties for the requesting agency. However, an employee may be permitted to use annual leave or leave without pay to provide services during working hours for a requesting agency and may receive compensation from the requesting agency for services performed during the period of leave.

2. Dual Employment Within an Agency

An employee who performs services during other than normally scheduled hours of work for his employing agency may be considered to be performing dual employment and be paid additional compensation, if such services constitute independent, additional job duties from those of the employee's primary duties within the agency. No employee shall receive any additional compensation from the employing agency while in a leave with pay status to include all designated State holidays, annual leave, and compensatory time. The agency head should only approve dual employment within the same agency when extraordinary circumstances exist based on the agency's business needs.

D. Compensation for Dual Employment

1. No compensation for dual employment shall be paid to an employee prior to the approval of a dual employment agreement.
2. Both the employing agency and the requesting agency must comply with the provisions of the Fair Labor Standards Act (FLSA).
3. Compensation for dual employment will be determined by the requesting agency; however, the maximum compensation that an employee will be authorized to receive for dual employment in a fiscal year shall not exceed 30% of the employee's annualized salary with the employing agency for that fiscal year. The employing agency is responsible for ensuring that dual employment payments made to its employees within one fiscal year do not exceed the 30% limitation. The Office of Human Resources (OHR) is authorized to approve exceptions to the 30% limitation based on written justification submitted by the agency.
4. Payment of dual employment compensation shall be made in a timely manner consistent with State law.

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5. No employee shall be eligible for any additional fringe benefits as a result of dual employment, including but not limited to annual leave, sick leave, military leave, State insurance, and holidays. However, dual employment compensation shall be subject to such tax and retirement deductions as required.

E. Dual Employment Recordkeeping

1. All dual employment requests must be in writing and contain the following information:
 - a. Name of requesting agency;
 - b. Description of services to be performed, beginning and ending dates of the dual employment, hours of work, and the FLSA status of the work to be performed for the requesting agency;
 - c. Name of employing agency;
 - d. Name of employee, State title of the employee's position, the FLSA status of the employee's position at the employing agency, present annualized salary of employee, and scheduled hours of work at the employing agency;
 - e. Amount and terms of compensation, if applicable; and
 - f. Signature of the agency heads or their designees, of both the requesting and the employing agencies, authorizing the dual employment as well as the signature of the employee.
2. For each dual employment arrangement, both the employing and requesting agency must maintain the written dual employment request. When the dual employment is within the same agency, that agency must maintain a written dual employment request for each dual employment arrangement.

19-714 GOVERNMENT EMPLOYEES INTERCHANGE PROGRAM

SCOPE AND PURPOSE

This Regulation governs the authority for administering an interchange program for government employees to facilitate short term assignments between or among federal, state, or local governments.

19-714.01 STATEMENTS OF POLICY

- A. The Budget and Control Board has delegated to the State Human Resources Director the authority to administer an Interchange of Government Employees Program as provided in Section 8-12-60 of the South Carolina Code of Laws.
- B. Agencies should refer to the Government Employees Interchange Program guidelines developed by the Office of Human Resources (OHR) for instructions on preparing an interchange agreement.

19-715 EMPLOYEE PERFORMANCE EVALUATION SYSTEMS

SCOPE AND PURPOSE

This Regulation governs the establishment and administration of employee performance evaluation systems for employees.

19-715.01 STATEMENTS OF POLICY

- A. The Budget and Control Board establishes Employee Performance Management System (EPMS) criteria to guide the development of an agency's EPMS.
- B. The Office of Human Resources (OHR) shall develop a written EPMS model policy, which complies with Budget and Control Board EPMS criteria, to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's written EPMS policy.
- C. Each agency shall develop an Employee Performance Management System that functions as an effective management tool within the agency, supports continuous communication between supervisors and employees, and provides a sound process for the evaluation of the performance and productivity of its employees. The Budget and Control Board criteria provide each agency with the flexibility to develop a written EPMS policy that meets the unique needs of the agency.
- D. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these Regulations but shall be governed by Section 8-17-380 of the South Carolina Code of Laws.
- E. Agency heads and other unclassified positions exempt from the State Employee Grievance Procedure Act are also exempt from the Employee Performance Management System. However, these employees shall be given annual performance evaluations.
- F. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

19-715.02 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES

- A. A performance review date is the first day which marks the beginning of a new review period. If an employee does not receive a performance evaluation prior to the performance review date, the employee shall receive a "meets performance requirements" rating by default.
- B. In Probationary Status (*Refer to Section 19-704.*)
 - 1. Upon initial employment or reemployment, the performance review date shall be established as:
 - a. Twelve months from the date of an initial employment or reemployment;
 - b. The academic year for instructional personnel; or
 - c. Not more than two full academic years duration for faculty at State technical colleges.
 - 2. The performance review date for a probationary employee who is promoted, demoted, reclassified, experiences an unclassified State title change, or is reassigned or transferred to a new class or unclassified State title shall be established as:

Twelve months from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title change for non-instructional personnel;

The academic year duration from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title for teachers; or

Not more than two full academic years duration from the date of the promotion, demotion, unclassified

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State title change, or reassignment or transfer to another unclassified State title for faculty at State technical colleges.

3. Exception - At the discretion of the agency head or his designee, up to six months of continuous satisfactory service in the previous class or unclassified State title may be counted toward the probationary period in the new class or unclassified State title which would result in a reduction in the length of the employee's performance review period.

C. In Trial Status (*Refer to Section 19-704.*)

1. A covered employee who is promoted, demoted, reclassified, reassigned, or transferred to a position or experiences an unclassified State title change in which he has not held permanent status in the class or unclassified State title shall have the performance review date reestablished six months from the date of the action.
2. An employee who is in a trial status and has had the trial period extended shall have the performance review date advanced one calendar day for each calendar day such extension is in effect, not to exceed 90 days.
3. Exception - An employee who is promoted and, prior to attaining permanent status in the class with a higher State salary range, or unclassified State title having a higher State salary range or higher level job duties or responsibilities, is demoted to the same class or unclassified State title from which promoted, shall retain the original performance review date established in the class with a lower State salary range, or unclassified State title having a lower State salary range or lower level job duties or responsibilities.

D. Covered Employees with Permanent Status in the Class or Unclassified State Title

If a covered employee with permanent status in the class or unclassified State title is promoted, demoted, reclassified; experiences an unclassified State title change; or is reassigned or transferred to a new class or unclassified State title in which the employee has previously completed a probationary or trial period, the employee retains permanent status in the class or unclassified State title and is not placed in a probationary or trial status. Instead, the employee's performance review date is reestablished six months from the date of the promotion, demotion, reclassification, reassignment, or transfer.

E. An employee's performance review date shall be changed for the following reasons:

1. An employee on approved leave without pay for more than 30 consecutive workdays shall have the performance review date advanced one calendar day for each calendar day on leave without pay after those first 30 workdays. Any day for which an employee is paid shall not be counted in determining the number of workdays the employee is on leave without pay.
2. A covered employee who within 30 calendar days of his performance review date receives a "Warning Notice of Substandard Performance," shall have the performance review date advanced one calendar day for each calendar day the "Warning Notice of Substandard Performance" is in effect.
3. An employee's performance review date may be adjusted due to promotions, demotions, reclassifications, reassignments, transfers, or unclassified State title changes, as provided in Section 19-715.
4. A covered employee who transfers to a position in the same class in another agency within six months or less of his review date shall have the performance review date advanced six months from

the date of the transfer to the new agency.

5. An employee's performance review date may be adjusted when an agency adopts a universal performance review date in its written EPMS policy.
6. An employee, who is promoted or reclassified upward and prior to attaining permanent status in the class with a higher State salary range or in the unclassified State title having a higher State salary range or higher level of job duties or responsibilities, and is demoted or reclassified downward to the same class or unclassified State title from which promoted or reclassified upward, shall retain the original performance review date established in the class with a lower State salary range or unclassified State title having a lower State salary range or lower level of job duties or responsibilities.

F. An employee's performance review date shall not be changed for the following reasons:

1. If a reassignment does not result in a new class or unclassified State title change, the employee's performance review date does not change.
2. When a class is reallocated, an employee in that class shall not have the performance review date reestablished.
3. An employee who receives an in-band increase or decrease within the current class shall not have the performance review date reestablished.

19-715.03 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR EMPLOYEES IN THE EXECUTIVE COMPENSATION SYSTEM

A. For Employees Covered by the State Employee Grievance Procedure Act

Upon completion of a probationary or trial period, the performance review date of a covered employee in the Executive Compensation System shall be reestablished on July 1.

B. Employees Exempt From Coverage by the State Employee Grievance Procedure Act

Annual performance evaluations shall be completed by July 1 for employees in the Executive Compensation System who are exempt from coverage by the State Employee Grievance Procedure Act. Such employees do not serve a probationary period or a trial period.

C. Exception – The performance review date for the above categories of employees shall be July 1, unless the agency adopts a universal performance review date in its written EPMS policy.

19-715.04 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR AGENCY HEADS

Annual performance evaluations shall be completed by July 1 for agency heads.

19-716 STAFF DEVELOPMENT AND TRAINING

SCOPE AND PURPOSE

This Regulation governs staff development and training programs for agencies but does not affect sabbatical leave for academic personnel.

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19-716.01 STATEMENTS OF POLICY

- A. An agency may sponsor training for employees to improve or secure those skills necessary for the efficient and effective operations of the agency and to ensure uniformity in the administration of staff development and training programs throughout the State service.
- B. The agency head or his designee shall be responsible for the administration of staff development and training within the agency.

19-716.02 EDUCATIONAL LEAVE

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours, and the agency cannot feasibly adjust the work schedule of an employee, an employee may be allowed to take annual leave or be granted leave without pay in order to attend classes.

19-716.03 REQUIRED COURSES

An agency may require an employee to take a specific course that will help improve the employee's performance in the present position or acquire skills necessary to perform additional job duties to meet agency needs. If required, the agency will then pay all costs of the course, including tuition, fees, books, and examinations. An agency shall not pay for courses required to attain nor to maintain a professional license unless related to the performance of the employee's job duties. Attendance at required courses may constitute work time.

19-716.04 TUITION ASSISTANCE

- A. Agencies may provide tuition assistance to employees based on the guidelines recommended by the Office of Human Resources (OHR) and approved by the Budget and Control Board.
- B. When staff development and training needs cannot be accomplished within the Tuition Assistance Guidelines, the agency may submit a proposal to the Budget and Control Board for approval.
 - 1. Approval of the proposal by the Budget and Control Board must precede the selection of employees for training. Each proposal shall include the following information:
 - a. Program justification based on agency needs;
 - b. Description of the courses;
 - c. All classes and the number of positions in each class in the requested program;
 - d. Fiscal year cost estimates for participation in the requested program; and
 - e. A service commitment and payback agreement.
 - 2. Except as provided above, any other forms of educational assistance for employees or non-employees may not be given by agencies unless authorized by statute or by the Budget and Control Board.

19-717 DISCIPLINARY ACTIONS

SCOPE AND PURPOSE

This Regulation governs the administration of progressive discipline for employees in full-time equivalent (FTE) positions.

19-717.01 STATEMENTS OF POLICY

- A. The Office of Human Resources (OHR) shall develop a progressive discipline model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's progressive discipline policy.
- B. Each agency shall develop a written progressive discipline policy and establish procedures that will ensure timely and equitable treatment of employees' behavioral deficiencies and breaches of conduct.
- C. Whenever possible, coaching and counseling should precede any disciplinary action.
- D. Each agency's progressive discipline policy should provide for the following types of disciplinary actions:
 - 1. Oral Reprimand
 - 2. Written Reprimand
 - 3. Suspension
 - 4. Termination

An agency may also use reassignments, reclassifications, unclassified State title changes, and demotions as types of disciplinary actions.

- E. All suspensions shall be without pay.

19-718 STATE EMPLOYEE GRIEVANCES AND APPEALS**SCOPE AND PURPOSE**

This Regulation sets forth the procedures for grievances and appeals under the State Employee Grievance Procedure Act (the Act), codified at Section 8-17-310 through Section 8-17-370 of the South Carolina Code of Laws, as amended.

19-718.01 STATEMENTS OF POLICY

- A. The Office of Human Resources (OHR) shall develop a grievance model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's grievance policy.
- B. Each agency shall develop a grievance policy and established procedures that will ensure timely and equitable treatment for the review of the employee's grievances.
- C. All covered employees are eligible to initiate a grievance or an appeal as specified in the Act.
- D. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch

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campuses, shall not be covered by these Regulations but shall be governed by Section 8-17-380 of the South Carolina Code of Laws.

- E. No employee shall be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the Act.

19-718.02 INTERNAL AGENCY GRIEVANCE PROCEDURES

- A. Each notice of an employment action that may constitute a grievance under the Act should be in writing. A voluntary acceptance of such an action on the part of a covered employee should also be in writing. The notice must advise the covered employee of the action taken and, except in cases where the action is voluntary as evidenced by a signed statement by the covered employee, should advise of the covered employee's right to initiate a grievance.
- B. Each agency shall establish written internal agency grievance procedures. All provisions shall comply fully with the Act and, as provided for in the Act, be submitted to OHR for approval.
- C. Each agency shall ensure that each covered employee is afforded access to a copy of the agency's internal agency grievance procedures.

19-718.03 COVERED EMPLOYEES AND THEIR REPRESENTATIVES

- A. "Covered employee" means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.
- B. Throughout the grievance and appeal process, each covered employee may be represented and advised by counsel or other representative or be self-represented.
- C. The Act exempts certain employees from its provisions as noted in Section 8-17-370 of the South Carolina Code of Laws.

19-718.04 GRIEVANCES

- A. Grievances shall include terminations, suspensions, involuntary reassignments, and demotions. Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. However, reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals. A reduction in force is an adverse employment action considered

as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

- B. A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action.
- C. The following examples of employment actions do not constitute a basis for a grievance or an appeal:
 1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
 2. A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification; and
 3. A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
 4. A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion;
 5. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

19-718.05 APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR

- A. If a covered employee is not satisfied with the agency's final decision concerning his grievance, he may appeal, after all administrative remedies to secure relief within the agency have been exhausted, to the State Human Resources Director who will determine whether to dismiss the appeal or remand or forward the appeal for further action.
- B. A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within 55 calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or 55 calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal. The time periods for appeal to the State Human Resources Director may not be waived.
- C. The Office of Human Resources shall develop standard forms to be used in all appeal procedures.

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- D. Upon receipt of an appeal from a covered employee, the State Human Resources Director shall:
1. Acknowledge receipt of the appeal and require that the covered employee submit a standard appeal application form;
 2. Upon receipt of the standard appeal application form, notify the agency to furnish the State Human Resources Director a copy of all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days following the request, unless an extension is granted; and
 3. Determine whether the appeal is timely and complies with the jurisdictional requirements of the Act.
- E. If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision.
- F. If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency.
- G. If the State Human Resources Director determines that the covered employee has pending related criminal charges against him, the appeal process may be held in abeyance pending the outcome of those charges. If the appeal is held in abeyance, the covered employee or his representative must notify OHR within 30 calendar days after the disposition of the charges has been determined in order to preserve the covered employee's right to further pursue his appeal. Failure to contact OHR within those 30 calendar days will be deemed a waiver and abandonment of the appeal.
- H. If the State Human Resources Director determines that the appeal is timely and complies with the requirements of the Act, he will forward the appeal either (1) to the mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated panel of the State Employee Grievance Committee [Committee] and Committee Attorney for a hearing, whichever is appropriate based on the type of adverse employment action.
- I. When an appeal is forwarded to a designated Committee panel, the State Human Resources Director will notify the covered employee and the agency with a statement as to the issues which have been presented by the parties for presentation before the Committee for decision.
- J. The official record on each appeal and all related correspondence and documents shall be maintained in a confidential file by OHR.
- K. The State Human Resources Director will send the notices and correspondence pertaining to an appeal directly to the parties. When a party designates a representative, the State Human Resources Director will send all notices and correspondence to that representative, rather than to the party.

19-718.06 MEDIATION PRIOR TO STATE EMPLOYEE GRIEVANCE COMMITTEE-HEARINGS

- A. "Mediation" means an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

B. Once an appeal has been made to the State Human Resources Director and has been determined to meet the jurisdictional requirements for an appeal to be forwarded to the Committee, the State Human Resources Director shall appoint a mediator to the appeal of the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy.

C. The mediator:

1. Shall review the documents which have been submitted by each party to the State Human Resources Director and schedule time(s) and location(s) to meet with both parties, jointly or independently, to attempt to resolve the matter;
2. Has sole authority to determine whether the meeting includes the parties with their representatives, jointly or independently;
3. Should determine when the mediation is not viable, that an impasse exists, or that the mediation should end but the mediation cannot be unilaterally ended without the permission of the mediator; and
4. Should notify each party in writing as to the status of the mediation process no later than ten calendar days prior to the scheduled Committee hearing.

D. Mediation Conferences

1. Mediation conferences are confidential and limited to no more than three representatives, including legal counsel and the covered employee, for each party. An observer who has been assigned to conduct mediations for OHR may attend for training purposes if both parties to the mediation concur.
2. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement.
3. Each covered employee is entitled to representation at the mediation conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.
4. If the dispute is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for OHR to assist in drafting the agreement.

E. Confidentiality

1. Any discussions by any of the parties concerned during the mediation process shall be kept confidential and shall not be used or referred to during subsequent proceedings.

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2. The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

19-718.07 APPEALS FORWARDED TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE

- A. If a resolution through mediation as governed by Section 19-718.06 of the South Carolina Code of Laws cannot be accomplished, the State Human Resources Director shall forward the appeal to the designated Committee panel of the Committee.
- B. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings.
- C. Witnesses
 1. Notice - After an appeal has been determined to be appealable to the Committee and has been placed on the Committee's docket, the covered employee and the agency, or their designated representatives, shall exchange witness lists which must be received by the other party no later than five calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Witness lists which have not been exchanged as required by this provision and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
 2. Character Witnesses - No more than two character witnesses for each side will be permitted to testify before the Committee when evidence of character is relevant to the issues. A character witness is defined as a witness offered solely for the purpose of presenting testimony which bears on the positive or negative general character of the covered employee, i.e., the covered employee's reputation for truthfulness, peaceful or violent manner, or other considerations of character which have a bearing on the matter before the Committee.
 3. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for witnesses at the request of either party. In the event that either party in a case has difficulty in obtaining a witness's agreement to testify, such party must request in writing the issuance of a subpoena which must be received by OHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include the name of the witness. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred by a subpoenaed witness shall be paid by the requesting party.
 4. Sequestration of Witnesses - Witnesses other than representatives that will be witnesses shall be sequestered and shall not be in the hearing room except for preliminary comments, the Committee's opening statement, and that witness's testimony in a public hearing or a hearing held in executive session.
 5. Depositions de bene esse - The testimony of a witness may be submitted into evidence in the form of a deposition de bene esse when the attendance of the witness whose testimony is required cannot be had (a) by reason of (i) extreme age, (ii) sickness or infirmity, or (iii) indispensable absence on public official duty, (b) as a result of verification of his intended absence from the State before the

appeal can be heard by the designated Committee panel, or (c) when such witness may be without the limits of the State. If the parties cannot agree to the use of a deposition de bene esse, the party desiring to submit the deposition de bene esse may request permission from the Committee Chairman or his designee and the Committee Attorney to submit the deposition de bene esse. The party opposing the submission will be permitted an opportunity to respond to the request. The request and the response may be made either in writing before or verbally at the hearing. When the parties agree upon, or a party's request is granted for the use of, a deposition de bene esse, notice must be exchanged as to the time of the deposition de bene esse to allow all interested parties to attend and participate. No other types of depositions, including discovery depositions, are permitted.

D. Documents

1. Submission to OHR and Exchange by the Parties - Any records, reports, and documentation submitted by either party to be forwarded to the Committee prior to the hearing must be received by OHR no later than 15 calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Those documents submitted by both parties will be provided by OHR to committee members prior to the hearings and considered to be the record during the hearing and marked into evidence as Committee Exhibit I. Each covered employee granted a hearing before the Committee will receive a copy of the records, reports, and documentation submitted by the agency. In like manner, a copy of any records, reports, and documentation filed by a covered employee will be sent to the agency.
2. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for files, records, and documentation on the grievance at the request of either party. In the event that either party in a case has difficulty in obtaining the production of files, records, and documentation on the grievance, such party must request in writing the issuance of a subpoena which must be received by OHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include a description sufficiently specific to identify the documents in question and the name of the custodian of the documents in question. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred in the production of the documents shall be paid by the requesting party. Subpoenaed documents shall be received by the requesting party no later than five calendar days prior to the hearing.
3. Committee Exhibit I
 - a. The State Human Resources Director shall arrange for the reproduction of records, reports, and documentation timely submitted by both parties and distribute copies, prior to the date of the hearing, to the designated Committee panel and Committee Attorney for that hearing.
 - b. The documents transmitted by the State Human Resources Director to the designated Committee panel and Committee Attorney must be marked into evidence as "Committee Exhibit I" during the Committee Chairman's opening statement at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party.

E. Panel Hearings

1. Scheduling and Notice - The State Human Resources Director shall establish a date, time, and place for the hearing of each appeal and provide reasonable notice to the covered employee, agency, designated Committee panel, and Committee Attorney. Prior to the commencement of the hearing,

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the State Human Resources Director has the authority to grant a postponement based upon extenuating circumstances such as illness or death.

2. Executive Session Hearings - All hearings before the State Employee Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act prior to the designated Committee panel voting to go into executive session. If the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney, and persons approved by the designated Committee Chairman may attend.
3. Committee Members
 - a. The Committee shall consist of at least 18 and not more than 24 members who must be appointed by the Budget and Control Board in accordance with the Act.
 - b. The State Human Resources Director may divide the Committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings.
 - c. A chairman shall be elected from the membership of the Committee each year after approval of membership of new members by the Budget and Control Board. A meeting for election of a chairman shall be held as soon as practicable after appointments are made.
 - d. A quorum of a panel shall consist of at least three Committee members. No hearings may be conducted without a quorum.
 - e. Whenever an appeal before the Committee is initiated by or involves an employee of an agency of which a Committee member also is an employee or involves another impermissible conflict of interest, the Committee member is disqualified from participating in the hearing.
4. Committee Attorney
 - a. The Budget and Control Board is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of Committee Attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the Budget and Control Board, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as Committee Attorney.
 - b. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions and all legal issues.
5. Continuances and Postponements
 - a. Panel hearings will be conducted on the date and at the time scheduled unless the Committee, acting collectively or through its designated Committee Chairman, upon commencement of a hearing, grants a postponement based upon extenuating circumstances.
 - b. Each covered employee is entitled to representation at the panel hearing and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend the panel hearing, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the panel hearing. The State Human Resources Director shall determine whether or not

reasonable justification exists based on documents submitted by the party on this issue and based on other information available relating to the panel hearing. Documents submitted by the party on the issue of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled panel hearing. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

- c. If the agency fails to appear at the panel hearing without reasonable justification, the designated Committee panel will base its decision on a review of Committee Exhibit I and a presentation of the case by the covered employee.
6. Administrative Assistance, Recordings of Hearings, and Transcripts
- a. The State Human Resources Director shall provide to the Committee from the resources of OHR such administrative and clerical services as may be required.
 - b. All proceedings before the Committee shall be recorded by OHR. The audio tape shall be preserved in accordance with the retention schedule of OHR.
 - c. The covered employee or the agency who initiates a petition for judicial review is responsible for preparation of a transcript and paying the cost of preparation of a transcript of the audio tapes of a hearing required for certification of the record to the Court of Common Pleas.
7. Submission of Witness and Representative Lists to Committee - At the beginning of the hearing, each party shall provide to the secretary of the designated Committee panel a list of representatives and witnesses. Representatives who will testify must be listed as both a representative and a witness. Witness lists which have not been exchanged as required by Section 19-718.07 C. 1. of the South Carolina Code of Laws and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
8. Conduct of Hearings - The presiding Committee Chairman shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The Committee will give effect to rules of privilege recognized by law. The parties shall be bound by the decisions of the presiding officer or Committee Attorney insofar as such hearings are concerned.
9. Opening Statements and Order of Presentation of the Case
- a. The designated Committee Chairman shall open the hearing by explaining the procedures to be followed in the hearing.
 - b. Each party shall be given an opportunity to make an opening statement.
 - c. The covered employee shall present his case first, followed by the agency.
10. Direct and Cross Examinations
- a. The testimony of witnesses shall be under oath or affirmation.
 - b. Each party shall have the right to examine and cross-examine witnesses, as appropriate.
 - c. The designated Committee Chairman, the Committee Attorney, or any member of the designated Committee panel may direct questions to any party or witness at any time during the proceedings.

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d. Each party may object to testimony, questions, or documents.

11. Evidentiary Matters - Evidentiary matters as governed by the South Carolina Administrative Procedures Act will apply in hearings before the Committee.

12. Interpretations from OHR - The designated Committee Chairman of a designated Committee panel may request information or assistance in interpretations of rules and Regulations from the State Human Resources Director.

13. Closing Statement

a. Before closing the hearing, the designated Committee Chairman shall allow the parties to make a closing statement.

b. The covered employee will have the option of closing first or last.

F. Written Committee Decisions

1. The designated Committee panel shall retire into a separate executive session, without the parties present, to receive legal advice from the Committee Attorney and consider the evidence. The Committee Attorney may be present during the Committee's deliberations on its decision only upon the request of the designated Committee Chairman. No vote by the designated Committee panel may be taken in executive session.

2. The vote of each member of the designated Committee panel on the merits of the appeal shall be recorded.

3. Decisions of the Committee shall be determined by a simple majority of those members who heard the appeal.

4. Within 20 calendar days of the conclusion of the hearing, the designated Committee panel shall make its final written decision.

5. The final decision of the Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision.

6. As governed by the provisions of the Act, the Committee may sustain, reject, or modify a grievance hearing decision of an agency.

7. Any member agreeing with the majority decision but differing with the rationale may prepare a concurring decision. Any member voting in the minority may prepare a dissenting opinion.

8. The Committee Attorney or the attorney for OHR or both may assist the Committee in the preparation of its findings of fact, statements of policy, and conclusions of law.

9. The decision of the Committee shall be transmitted to the State Human Resources Director for notification of the covered employee and the employing agency or their representatives.

10. As a result of this final written decision, either the covered employee or the agency may request reconsideration within 30 calendar days from receipt of the decision.

11. The designated Committee panel shall request assistance from the Committee Attorney or the attorney for OHR or both in the preparation of a written response to a request for reconsideration.
12. If no request for reconsideration is made or when a response is made to a request for reconsideration, the Committee decision is final in terms of administrative review.

19-718.08 APPEALS FORWARDED TO A MEDIATOR-ARBITRATOR

- A. "Mediation-arbitration" means an alternative dispute resolution process that provides for the submission of an appeal to the mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.
- B. The State Human Resources Director shall forward to a mediator-arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and involuntary reassignments. In these cases, the arbitration decision is final in terms of administrative review.
- C. Selection and Assignment of the Mediator-Arbitrator
 1. The mediator-arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to encourage and facilitate the resolution of the appeal and, if the appeal is not resolved, issue a decision which determines whether the covered employee substantiated that the agency's decision was not reasonable.
 2. The State Human Resources Director shall maintain a pool of qualified mediator-arbitrators trained by OHR in alternative dispute resolution, grievance, and related human resources issues.
 3. The State Human Resources Director shall have the discretion to assign either two mediator-arbitrators, one to serve as mediator during the mediation phase and one to serve as arbitrator during the arbitration phase, or one mediator-arbitrator to serve as both mediator and arbitrator. If the State Human Resources Director assigns one mediator-arbitrator to serve as both mediator and arbitrator or an individual to serve as only the arbitrator during the arbitration phase, the following shall apply:
 - a. The State Human Resources Director shall send simultaneously to each party a list of five names of potential mediator-arbitrators from the pool along with a description of the professional experience of each potential mediator-arbitrator.
 - b. Each party shall have five calendar days from the date of receipt of the names in which to strike up to two names and return the list to the State Human Resources Director.
 - c. If OHR does not receive the list from the party within five calendar days from the date the party received the list, all persons named in the list shall be deemed acceptable.
 - d. From among the persons who have been approved on both lists, the State Human Resources Director shall appoint a mediator-arbitrator for that appeal. If the parties fail to agree on any of the persons named, or if the State Human Resources Director determines that an acceptable mediator-arbitrator from the list submitted to the parties is unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the State Human Resources Director shall have the authority to make an assignment from among other members of the mediator-arbitrator pool without the submission of additional lists.

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D. Mediation-Arbitration Conferences

1. The mediator-arbitrator shall review the documents which have been submitted by each party to the State Human Resources Director and shall schedule time(s) and location(s) to meet with both parties, jointly or independently.
2. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during mediation-arbitration conferences. An observer who has been assigned to conduct mediation-arbitrations for OHR may attend for training purposes if both parties to the mediation-arbitration conference concur.
3. Each covered employee is entitled to representation at the conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.
4. If the agency fails to appear at a conference without reasonable justification, the mediator-arbitrator will base an arbitration decision on a review of the documents which have been submitted by each party to the State Human Resources Director and a presentation of the case by the covered employee.
5. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement.

E. Mediation Phase

1. The mediator-arbitrator has sole authority to determine whether conferences during the mediation phase include the parties with their representatives, jointly or independently.
2. Initially, the mediator-arbitrator will attempt to assist the parties as a mediator in reaching a voluntary mutual resolution of the appeal.
3. The mediation phase cannot be unilaterally ended nor the arbitration phase begun without the permission of the mediator-arbitrator.
4. If the dispute is resolved, the mediator-arbitrator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for OHR to assist in drafting the agreement.

F. Arbitration Phase

1. If the mediator-arbitrator determines that the parties are unable to reach a resolution of the appeal by mediation during, but no later than, the 20 calendar days immediately following the initial conference with either or both parties, then the mediator-arbitrator shall notify the parties that the arbitration phase will proceed, as appropriate.
2. Procedures for Arbitration Phase

- a. During the arbitration phase, the parties will be allowed to submit to the mediator-arbitrator a concise written summary of the relevant issues involved in the appeal, notarized statements, and other additional documents. The parties must have provided the other party and the mediator-arbitrator with the written summary of relevant issues, any notarized statements from individuals who have knowledge about the issues on appeal, and other related documents concerning the appeal prior to the arbitration conference. The time for the exchange by the parties and submission to the mediator-arbitrator of the written summary of relevant issues, notarized statements, and other related documents will be determined by the mediator-arbitrator.
- b. During the arbitration phase, the mediator-arbitrator will allow each party a maximum of two hours to present his appeal, with the covered employee presenting his case first. Either the party or one of his representatives shall be designated as the spokesperson during the conference. No testimony will be allowed and others in attendance will not be allowed to speak or ask questions during the presentation of information. The parties may use the designated time to present any oral arguments concerning the issues on appeal. The covered employee may reserve a portion of the two hours to reply to the agency's contentions. This reply is limited only to information presented orally by the agency and shall not exceed one-half of the total time for the presentation of information. In extenuating circumstances, the mediator-arbitrator may increase or decrease the time each party has to present his appeal at the conference during the arbitration phase.
- c. The other party and his representatives may be present when a party presents his appeal during the arbitration phase.
- d. Conformity to legal rules of evidence shall not be necessary during the arbitration phase.
- e. At any time before the mediator-arbitrator makes a final arbitration decision, the mediation phase may be reopened at his initiative, or at his discretion upon request of a party.
- f. The mediator-arbitrator shall transmit to both parties a final written decision based on all documents properly submitted by both parties and the oral arguments presented during the arbitration phase within 45 calendar days after the mediator-arbitrator initially meets with either or both parties. This 45-day period may be extended by the State Human Resources Director under extenuating circumstances. When the expiration of this 45 day period occurs during the seven day waiting period required under the Older Workers Benefit Protection Act before a written agreement becomes effective, the State Human Resources Director will extend the 45 day period one day for each day remaining in the seven day waiting period.
- g. As a result of this final written decision, either the covered employee or the agency may request reconsideration by the mediator-arbitrator within 30 calendar days from receipt of the decision.
- h. The mediator-arbitrator shall request assistance from the attorney for OHR in the preparation of his final written decision and his written response to a request for reconsideration.

G. Confidentiality

1. The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator-arbitrator.
2. The mediator-arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation-arbitration in any adversary proceeding or judicial forum.

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3. All records, reports, documents, discussions, and other information received by the mediator-arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during judicial review.

19-718.09 JUDICIAL REVIEW OF ANY FINAL DECISION

Either party may seek judicial review from a final decision by the State Human Resources Director denying an appeal or by the State Employee Grievance Committee or mediator-arbitrator.

- A. The petition for judicial review must be initiated within 30 calendar days from receipt of the decision.
- B. Petition for judicial review of the final decision may be made by the covered employee to the Court of Common Pleas of the county in which the covered employee's place of employment is located.
- C. Only after an agency submits a written request to OHR seeking approval of the Budget and Control Board may the agency initiate a petition for judicial review to the Court of Common Pleas of the county in which the covered employee's place of employment is located. However, the agency may perfect the petition for judicial review only upon approval of the Board.
- D. The covered employee or the agency who initiates a petition for judicial review of a Committee decision is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the audio tapes of a hearing required for certification of the record to the Court of Common Pleas.
- E. The record for judicial review of a decision made by a mediator-arbitrator shall be limited to the documents which have been submitted by each party and the final written decision of the mediator-arbitrator.
- F. Neither the Board nor OHR nor the State Human Resources Director nor the Committee nor the mediator-arbitrator may be named in the petition for judicial review. However, any of these entities are entitled to make a motion in the Court of Common Pleas to be allowed to intervene to participate in the petition for judicial review for appropriate reasons including their interest in defending their policies.

19-718.10 COMPUTATION OF BACK PAY

- A. Reinstatement of pay resulting from a reversed disciplinary action shall be less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, received during the period of time in which the pay was deducted and shall be accomplished in the following manner:
 1. The covered employee shall submit to the agency a notarized statement of any wages earned during the interim period of disciplinary action;
 2. The agency shall submit a written request for the covered employee's reinstatement of pay and a statement of back pay due, less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, to the State Human Resources Director;
 3. Any unemployment compensation earned by the employee will be verified by OHR through the Employment Security Commission. The amount of unemployment compensation provided by the Employment Security Commission will be used in determining the final back pay amount.
 4. The computation of back pay must be in accordance with guidelines provided by the Office of the Comptroller General; and

5. The State Human Resources Director must approve the amount of reinstatement pay due the employee. That approval is not subject to administrative appeal and will constitute the final administrative decision.
- B. The above procedure shall be followed in reversed disciplinary actions resulting from both agency internal grievance procedures as well as appeals at the State level.
- C. The intent of this Regulation is only to make the employee whole as if the disciplinary action had not occurred.

19-718.11 APPROVAL OF PERSONNEL SETTLEMENTS

It is the policy of the Budget and Control Board that personnel settlement proposals be presented to the Board for approval as outlined in the following:

- A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;
- B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, Employment Security Commission, or South Carolina Human Affairs Commission; and
- C. In all other situations where specific approval of the Budget and Control Board would be necessary to disburse funds mentioned under the settlement proposal.
 1. All personnel settlement proposals shall contain such information as the Budget and Control Board or its designee specifies.
 2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

19-719 SEPARATION FROM STATE SERVICE

SCOPE AND PURPOSE

This Regulation governs how the State government employment relationship may end.

19-719.01 CONTINUOUS SERVICE AND BREAK IN SERVICE

A. Continuous Service

Continuous service is service with one or more agencies without a break in service.

B. Break in Service

An employee experiences a break in service when the employee:

1. Separates from State service and is paid for unused annual leave.

Exceptions

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- a. When an employee moves from a position in which the employee earns both annual and sick leave to a position in which the employee only earns sick leave. All earned sick leave shall be transferred in accordance with Section 19-710.05 A.
 - b. When an employee initially enters the Teacher and Employee Retention Incentive (TERI) Program and receives a lump sum payment for annual leave, he does not experience a break in service.
2. Moves from one State agency to another and is not employed with the receiving agency within 15 calendar days following the last day worked (or approved day of leave) at the transferring agency.
- Exception - Under extenuating circumstances an agency head may request an extension from 15 calendar days up to but not in excess of six months for an employee in a full-time equivalent (FTE) position to be employed in another FTE position within State government without having a break in service. Such requests require approval by the State Human Resources Director. The request must be made prior to the employee receiving a lump sum payment for unused annual leave and within 15 days of the last day the employee is in pay status.
3. Remains on leave for a period of more than one calendar year.

Exceptions

- a. The employee is on a military tour of duty with reemployment rights protected under federal or State law.
 - b. The employee is participating in the Government Employees Interchange Program as provided in Section 19-714.
 - c. The employee is on disability leave without pay that has been extended by the Office of Human Resources (OHR).
 - d. The employee is an academic personnel at an institution of higher learning on sabbatical leave.
4. Separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation.
 5. Involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts.
 6. Moves from an FTE position to a temporary, temporary grant, or time-limited position.

Exception - When an employee in an FTE position moves to a temporary, temporary grant, or time-limited position within 15 calendar days following the last day worked (or approved day of leave) during the employee's TERI program period, he does not experience a break in service. (*Refer to Section 19-719.01 B. 1. b.*)

19-719.02 RESIGNATION

- A. An employee may resign orally or in writing. Such notification of resignation should be accepted by the agency in the same manner as provided, whether written or oral, and an oral acceptance of a resignation should be generally confirmed in writing. Once an employee's resignation is accepted, it may not be withdrawn, cancelled, or amended without consent of the agency head or his designee.
- B. Resignations should be given to provide a minimum of two weeks notice.

- C. Any employee who voluntarily submits a written resignation may not grieve or appeal under the State Employee Grievance Procedure Act.

19-719.03 TERMINATION

For purposes of the State Employee Grievance Procedure Act, termination is the action taken by an agency against an employee to separate the employee involuntarily from employment.

19-719.04 REDUCTION IN FORCE

A. Statements of Policy

1. The Office of Human Resources shall develop a reduction in force model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's reduction in force policy.
2. Each agency shall develop a written reduction in force policy. This requirement shall not apply to academic personnel. However, each institution of higher learning or medical institution of education and research shall develop a policy outlining the criteria for a reduction in force for these employees.
3. Technical colleges are required to have a reduction in force policy.
4. Employees on authorized leave are eligible to compete in a reduction in force as if they are not on leave.

B. Reduction in Force Plan

1. Each agency shall submit a reduction in force plan to OHR for review and approval for procedural correctness prior to its implementation.
2. A reduction in force plan must include:
 - a. A reason for the layoff as defined by the agency. These circumstances shall be either agency reorganization, work shortage, or loss of funding. If the reason for the reduction in force is that the agency can no longer meet its personal services budget, OHR will forward a copy of the plan to the Office of State Budget for concurrence on the budgetary issue prior to final approval.
 - b. The competitive area(s) in which the reduction in force will apply. Competitive area(s) shall be determined by the agency according to critical needs. Any covered employee affected by a reduction in force shall have bumping rights within a competitive area(s).
 - c. The competitive group(s) within the competitive area(s) as defined by the agency including any employees in specified competitive area(s).
 - d. The proposed list of employees to be affected by the reduction in force which includes:
 - (1) The age, race, and sex of all employees in the competitive group(s); and
 - (2) A preliminary list of employees in each group in retention point order.
 - e. The efforts that will be made to assist laid off employees to find other employment, including notice to OHR.

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- f. A current organizational chart showing the competitive area(s) and competitive group(s).
- g. Justification of the use of any special exceptions as provided in the agency's reduction in force policy.

3. Implementation

After a reduction in force plan is reviewed and approved by OHR for procedural correctness and before it becomes effective, an agency representative shall inform affected employees of the following:

- a. The reason for the reduction in force;
- b. The competitive area(s) and competitive group(s);
- c. The effects of the reduction in force upon State benefits;
- d. The assistance offered by OHR;
- e. The employee's recall rights; and
- f. The method of notification should a job become available.

4. Reduction in Force Rights

- a. Any covered employee affected by a reduction in force shall retain covered status and recall rights for a period of one year from the date of separation.
- b. Employees who are affected by the reduction in force shall be recalled in inverse order based on retention points should a position become available within the competitive area.
- c. A covered employee who is separated due to a reduction in force shall retain continuous service if the employee is reinstated within one year from the date of separation.
- d. An employee who is separated by an agency by a reduction in force and is subsequently reinstated within one year shall have his sick leave restored and shall be given the option of buying back all, some, or none of his annual leave at the rate at which it was paid out.

5. Grievance Rights

A covered employee who is affected by a reduction in force may grieve or appeal the reduction in force under the State Employee Grievance Procedure Act if the appeal is based on inconsistent or improper application of a reduction in force policy or plan.

19-719.05 EXIT INTERVIEWS

- A. Each agency should establish a procedure for obtaining separation information from each employee who separates from State service. This procedure should include an exit interview form to reflect the specific reasons for the employee's separation. A reasonable effort should be made to interview the employee to obtain the information.
- B. Each agency should maintain and summarize a general file on all exit interviews for review by

management.

19-719.06 ANNUAL AND SICK LEAVE UPON SEPARATION

- A. Section 19-709.05 explains the applicable annual leave provisions when an employee separates from State service.
- B. Section 19-710.06 explains the applicable sick leave provisions when an employee separates from State service.

19-720 RECORDKEEPING

SCOPE AND PURPOSE

This Regulation governs the recordkeeping requirements for human resources programs.

19-720.01 STATEMENT OF POLICY

Each agency shall establish and maintain all records required by State law or the Office of Human Resources (OHR) concerning human resources programs.

19-720.02 EMPLOYEE RECORDS

- A. Each agency shall establish and maintain an official human resources file for each employee which shall include, but not necessarily be limited to, the following:
 1. A copy of the employment application;
 2. Copies of all human resources actions reflecting the employee's work history with the agency;
 3. Documentation directly related to the employee's work record; and
 4. Copies of all performance evaluations.

(Refer to Section 19-707.02 J. 3.)

- B. An employee's official human resources file shall be available for the employee's review upon request.

19-720.03 RECORDS RELEASE UNDER THE FREEDOM OF INFORMATION ACT

- A. In response to requests for information from human resources records, agencies may provide, pursuant to the Freedom of Information Act, an employee's name, date of employment, title, sex, and race. The determination to disclose other types of information should be made on a case by case basis. Requests for salary information should be answered in accordance with the Freedom of Information Act. *(Refer to Section 19-703.05.)*
- B. In responding to requests for information concerning current or former employees by prospective employers under Section 41-1-65 of the South Carolina Code of Laws, agencies may provide information as follows:
 1. Agencies responding to oral requests for information may disclose an employee's or former employee's dates of employment, pay level, and wage history.

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2. Agencies responding to written requests may disclose the following information to which an employee or former employee may have access:
 - a. Written employee evaluations;
 - b. Official human resources notices that formally record the reasons for separation;
 - c. Whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
 - d. Information about job performance.
3. Agencies shall not knowingly or recklessly release or disclose false information.
4. Responses to requests under Section 41-1-65 of the South Carolina Code of Laws should be considered in conjunction with the Freedom of Information Act.

19-720.04 HUMAN RESOURCES INFORMATION SYSTEM (HRIS)

Refer to Section 19-701.05.

Fiscal Impact Statement: No additional cost is incurred by the State or any political subdivision.