

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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of the
GENERAL ASSEMBLY

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

SOUTH CAROLINA STATE REGISTER

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

STYLE AND FORMAT

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

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

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

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

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

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

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

Executive Orders are actions issued and taken by the Governor.

2007 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	1/12	2/9	3/9	4/13	5/11	6/8	7/13	8/10	9/14	10/12	11/9	12/14
Publishing Date	1/26	2/23	3/23	4/27	5/25	6/22	7/27	8/24	9/28	10/26	11/23	12/28

REPRODUCING OFFICIAL DOCUMENTS

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

PUBLIC INSPECTION OF DOCUMENTS

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

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

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

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

DOC No.	RAT No.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
3047		SR31-2	Milk Producers Tax Credit	1/15/07	Department of Agriculture
3057		SR31-2	Retail Licenses And Partnerships	2/01/07	Department of Revenue
3002		SR31-2	Shellfish	2/08/07	Department of Health and Envir Control
3059		SR31-3	Highway Advertising Control	3/06/07	Department of Transportation
3042		SR31-4	Practice and Procedures	3/20/07	Public Service Commission
3061		SR31-4	Termination of the SCAAIP Joint Underwriting Association	3/21/07	Department of Insurance
3052		SR31-4	Telecommunications Utilities	4/09/07	Public Service Commission
3055		SR31-5	Public Swimming Pools	5/09/07	Department of Health and Envir Control
3069		SR31-5	Air Pollution Control	5/09/07	Department of Health and Envir Control
3091		SR31-5	Procurement	5/09/07	Budget and Control Board
3092		SR31-5	Licensure CPA's & Practitioners, Registration Accounting Firms	5/09/07	LLR: Board of Accountancy
3073		SR31-5	Farmers Markets	5/09/07	Department of Agriculture
3063		SR31-5	Sewerage and Water Utilities	5/09/07	Public Service Commission
3080		SR31-5	Nursing Programs	5/09/07	LLR: Board of Nursing
3072		SR31-5	Reading, Writing, and Mathematics Objectives Grades 9-12	5/09/07	Department of Education
3090		SR31-5	Charter School Appeals	5/09/07	Department of Education
3089	R38	SR31-5	At-Risk Students	5/09/07	Department of Education
3088		SR31-5	Defined Program, Grades 9-12	5/09/07	Department of Education
3087		SR31-5	Administrative and Professional Personnel	5/09/07	Department of Education
3084		SR31-6	Septic Tank Site Evaluation Fees	5/17/07	Department of Health and Envir Control
3085		SR31-6	Non-Game and Endangered Species	5/17/07	Department of Natural Resources
3083		SR31-6	Air Pollution Control	5/22/07	Department of Health and Envir Control
3093		SR31-6	Driver Training Schools	5/25/07	Department of Motor Vehicles
3094	R79	SR31-6	Truck Driver Training Schools	5/25/07	Department of Motor Vehicles
3102		SR31-6	Practice of Psychology	5/30/07	LLR: Board of Examiners in Psychology
3103		SR31-6	Practice of Optometry	5/30/07	LLR: Board of Examiners in Optometry
3104		SR31-6	National Electrical Code	5/30/07	LLR: Building Codes Council
3105		SR31-6	Reporting Fatalities and Hospitalization Incidents to OSHA	5/30/07	LLR: Occupational Safety and Health
3086		SR31-6	Hunting in Wildlife Management Areas	6/06/07	Department of Natural Resources
3101			Req Protesting Beer /Wine Permits or Alcoholic Liquor Licenses	1/08/08	Department of Revenue
3100			Manufactured Homes and Modular Homes	1/08/08	Department of Revenue
3096	R100	SR31-6	Hazardous Waste Management	1/14/08	Department of Health and Envir Control
3119			Educational Requirements	2/03/08	LLR: Real Estate Appraisers Board
3108	R47	SR31-6	Intrastate Movement of Certain Animals	2/10/08	Clemson Univ, Livestock-Poultry Comm
3115	R32	SR31-5	Preferred Mortality Tables, Minimum Reserve Liabilities	2/10/08	Department of Insurance
3116			Malpractice Insurance Claims	2/10/08	Department of Insurance
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2 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication June 22, 2007, 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 Charleston County

Upgrade of existing angiography equipment from analog to digital
Medical University of South Carolina Medical Center
Charleston, South Carolina
Project Cost: \$1,100,000

Renovation for the establishment of an ambulatory surgical facility (ASF) to include two (2) operating rooms (OR's)
Southeastern Spine Institute, LLC
Mount Pleasant, South Carolina
Project Cost: \$3,642,078

Conversion of twenty-five (25) existing nursing home beds to general acute care beds for a total licensed bed capacity of two-hundred ninety-six (296) general acute care beds
Trident Medical Center
Charleston, South Carolina
Project Cost: \$682,827

Affecting Greenwood County

Replacement of a fixed single-slice Computed Tomography (CT) scanner with a 64-slice CT scanner
Self Regional Healthcare
Greenwood, South Carolina
Project Cost: \$1,108,230

Purchase and installation of a 16-slice Computed Tomography (CT) scanner
Self Regional Healthcare
Greenwood, South Carolina
Project Cost: \$1,000,970

Purchase and installation of a multi-purpose X-ray System
Self Regional Healthcare
Greenwood, South Carolina
Project Cost: \$1,573,175

Affecting Greenville County

Construction of a forty-four (44) bed institutional nursing care facility which does not provide a community service as part of a proposed Continuing Care Retirement Community (CCRC)
Skilled Nursing Center at Cascades Verdae
Greenville, South Carolina
Project Cost: \$7,217,623

Affecting Lancaster County

Construction of a freestanding radiation therapy center to include the purchase and installation of a fixed linear accelerator and four (4) slice Computed Tomography (CT) scanner
South Carolina Oncology Services, LLC
Lancaster, South Carolina
Project Cost: \$8,631,333

Addition of thirty-one (31) acute care beds for a total of one-hundred ninety-nine (199) acute care bed and eighteen (18) substance abuse beds
Springs Memorial Hospital
Lancaster, South Carolina
Project Cost: \$214,760

Affecting Richland County

Purchase of one dual source 64-slice Computed Tomography (CT) scanner and one 16-slice CT scanner to replace two (2) existing single-slice CT scanners
Palmetto Health Richland
Columbia, South Carolina
Project Cost: \$3,127,670

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning June 22, 2007. "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 Greenville County

Purchase and installation of a 64-slice Computed Tomography (CT) scanner to be located in the Patewood Medical Office Building C
Greenville Hospital System
Greenville, South Carolina
Project Cost: \$2,944,442

Affecting Lexington County

Addition of a fixed 1.5T Magnetic Resonance Imaging (MRI) unit to be located in Lexington Orthopedics
Lexington County Health Services District, Inc.
West Columbia, South Carolina
Project Cost: \$2,109,853

In accordance with Section 44-7-540, Code of Laws of South Carolina, the public is hereby notified that a Certificate of Public Advantage (COPA) application has been accepted for filing and publication June 22, 2007, for the following project(s). After the application is deemed complete, affected persons may request a public hearing with a notice which will be published in a newspaper having general circulation in the area. For further information, please contact Mr. Joel C. Grice, Director, Bureau of Health Facilities and Services Development, 2600 Bull Street, Columbia, SC 29201 at (803) 545-4200

4 NOTICES

Affecting Spartanburg County

Certification as being to the public advantage for Regional HealthPlus, LLC (“RHP”), a physician-hospital organization which currently serves patients in the Spartanburg area of South Carolina since 1995, to be able to continue its current provision of healthcare services without challenge under antitrust law. RHP is owned by participating physicians and Spartanburg Regional Healthcare System, a public hospital corporation and political subdivision of the State of South Carolina

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF CANCELLATION AND RESCHEDULING OF PUBLIC HEARING

The Department of Health and Environmental Control issued a Notice of Proposed Regulation to revise the Department’s Coastal Division Regulations 30-1 through 30-18 related to permitting in the critical areas of the coastal zone, in the S.C. *State Register* on January 26, 2007, identified as Document 3111. The proposed regulation as published in the *State Register* would amend definitions, specify the Department’s policies regarding construction of docks and piers, and correct technical errors in language and codification for the overall improvement of the regulations. The appeals procedure would also be revised to concur with Act 387 (2006). The Notice scheduled a Staff Informational Forum that was conducted on February 27, 2007, a write-in comment period that closed February 27, 2007, and a Public Hearing scheduled before the DHEC Board on April 12, 2007. No public comments were received at the informational forum or during the write-in public comment period. Due to scheduling conflicts, the Public Hearing originally scheduled in Document 3111 was canceled for April 12, 2007, and rescheduled for June 14, 2007. Subsequently, the public hearing scheduled for June 14, 2007, has been rescheduled for **August 9, 2007**, as follows:

The Public Hearing to be conducted by the Board of Health and Environmental Control for this proposed regulation has been rescheduled for August 9, 2007. The hearing will be held at the regularly scheduled Board meeting on August 9, 2007, in the Board Room of the Commissioner’s Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull St., Columbia, 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 hearing on August 9, 2007, will be noticed in the Board’s agenda to be published by the Department 24 hours in advance of the meeting. Interested persons are invited to make oral or written comments on the proposed regulation at the public hearing. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentations for the record. Any comments made at the public hearing will be given consideration in formulating the final version of the regulations.

Interested persons planning to attend the public hearing, please enter the building at its front entrance facing Bull Street.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF CANCELLATION AND RESCHEDULING OF PUBLIC HEARING

The Department of Health and Environmental Control issued a Notice of Proposed Regulation to revise Regulation 61-106, *Tanning Facilities*, in the S.C. *State Register* on January 26, 2007, identified as Document 3114. The proposed regulation as published in the *State Register* would reduce the regulatory burden to the tanning industry. The Notice scheduled a Staff Informational Forum that was conducted on February 27, 2007, a write-in comment period that closed February 27, 2007, and a Public Hearing scheduled before the DHEC Board on April 12, 2007. All public comments received at the informational forum and during the write-in public comment period were considered. Due to scheduling conflicts, the Public Hearing originally scheduled in Document 3114 was canceled for April 12, 2007, and rescheduled for June 14, 2007. Subsequently, the

public hearing rescheduled for June 14, 2007, has been canceled and rescheduled for **August 9, 2007**, as follows:

The Public Hearing to be conducted by the Board of Health and Environmental Control for this proposed regulation has been rescheduled for August 9, 2007. The hearing will be held at the regularly scheduled Board meeting on August 9, 2007, in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull St., Columbia, 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 hearing on August 9, 2007, will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Interested persons are invited to make oral or written comments on the proposed regulation at the public hearing. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentations for the record. Any comments made at the public hearing will be given consideration in formulating the final version of the regulations.

Interested persons planning to attend the Public Hearing are asked to enter the building by the front entrance facing Bull Street.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE

The Office of the Attorney General has notified the South Carolina Department of Health and Environmental Control of legal proceedings involving a determination of real property interest in tidelands. Pursuant to S.C. Code Ann. § 48-39-220 (Supp. 2006), the Department is providing notice to the public of the following legal action(s):

Lawrence K. Bradham, Jr., and Horseshoe Creek Development Corporation,
vs.

State of South Carolina
No. 06-CP-10-1122
Charleston County

The Complaint was filed on or about March 21, 2006. The State of South Carolina filed an Answer to that suit on or about April 21, 2006.

Brickyard Plantation Property Owners Association, Inc.,
vs.

State of South Carolina
No. 2007-CP-10-0509
Charleston County

The Complaint was filed on February 6, 2007. The State of South Carolina filed an Answer to that suit on or about March 19, 2007.

Cane Island Properties, LLLP,
vs.

The SC Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management and the State of South Carolina
No. 2005-CP-07-1183
Beaufort County

An Order of Judgment was filed on March 15, 2007.

6 NOTICES

Butler C. Derrick, III and Philip Bradley, Jr.,
vs.

State of South Carolina
No. 05-CP-10-2567
Charleston County

The Amended Complaint was filed on or about August 4, 2005. The State of South Carolina filed an Answer to that suit on or about August 24, 2005. A Consent Order was filed on January 3, 2007.

Cockfield Plantation Investment Co., LLC
vs.

State of South Carolina
No. 03-CP-15-778
Colleton County

The final disposition of the circuit court was filed on or about October 28, 2004.

Dinky's, LLC and Forrest G. Calvert,
vs.

State of South Carolina
No. 06-CP-08-222
Berkeley County

The Complaint was filed on or about February 1, 2006. The State of South Carolina filed an Answer to that suit on or about March 2, 2006. An Amended Complaint was filed on or about February 26, 2007. The State of South Carolina filed an Answer to Amended Complaint on or about March 13, 2007.

Anne Epting and William Capehart,
vs.

State of South Carolina and George Debnam, Jr.
No. 04-CP-10-3736
Charleston County

The State of South Carolina filed an Answer to that suit on or about October 11, 2004. The final disposition of the circuit court was filed on or about May 1, 2006.

John J. Evans, III,
vs.

State of South Carolina
No. 05-CP-10-3242
Charleston County

The Complaint was filed on or about August 10, 2005. The State of South Carolina filed an Answer to that suit on or about September 21, 2005. A Consent Order was filed on January 3, 2007.

Fort Lamar Home Owners Association,
vs.

State of South Carolina
No. 02-CP-10-739
Charleston County

The Complaint was filed on or about February 15, 2002. The State of South Carolina filed an Answer to that suit on or about April 19, 2002. The final disposition of the circuit court was filed on or about November 4, 2004.

Peter D. Grant,
vs.

State of South Carolina
No. 06-CP-07-4839

Charleston County

The Complaint was filed on or about December 8, 2006. The State of South Carolina filed an Answer on or about January 5, 2007.

Headwaters Development, Limited Partnership

vs.

State of South Carolina

No. 04-CP-07-1611

Beaufort County

The Complaint was filed on or about September 2, 2004. The State of South Carolina filed an Answer to that suit on or about November 10, 2004. The final disposition of the circuit court was filed on or about June 20, 2005.

Hilton Head Plantation Property Owners' Association, Inc.,

vs.

Thomas M. Donald; Laura E. Donald; Dieter Meuderscheid; Rita Meuderscheid; M. Simone Lawrence; Alan J. Palchak; Dori S. Palchak; Jacqueline T. Strickland; John J. Geiger; Joyce A. Geiger; J. Keith Elmblad; June A. Elmblad; J. Louis Grant; Mary Jean Farley; Daniel M. Discoll; Leslie Hunt Driscoll; Vincent Paul Eck; Cecile O'Neill Eck; Edgar B. Seeley; Cynthia H. Seeley; Guy M. Blount; Melanie Blount; The State of South Carolina; and Jane Doe and Robert Roe

No. 03-CP-07-1331

Beaufort County

The final disposition of the circuit court was filed on or about June 1, 2006.

Island Preservation Company, LP,

vs.

State of South Carolina

No. 06-CP-15-276

Colleton County

The Complaint was filed on or about April 12, 2006, and a Second Amended Complaint was filed on or about September 18, 2006. The State of South Carolina filed an Answer to Second Amended Complaint and Counterclaim on or about November 2, 2006.

Gene D. Larson,

vs.

State of South Carolina

No. 07-CP-10-0183

Charleston County

The Complaint was filed on or about January 12, 2007. An Answer was filed on or about March 2, 2007.

James M. Leland, Jr.,

vs.

State of South Carolina

No. 03-CP-10-3313

Charleston County

The final disposition of the circuit court, Stipulation of Dismissal Without Prejudice, was filed on or about November 18, 2005.

Rutledge B. Leland, III,

vs.

State of South Carolina

No. 2007-CP-10-1798

Charleston County

8 NOTICES

A Complaint was filed on May 1, 2007.

John E. Maybank, II,
vs.
State of South Carolina
No. 04-CP-10-4834
Charleston County

The final disposition of the circuit court was filed on or about March 7, 2006.

John E. F. Maybank, II,
vs.
State of South Carolina
No. 04-CP-10-2091
Charleston County

The Complaint was filed on or about May 13, 2004. The State of South Carolina filed an Answer to that suit on or about June 15, 2004. The final disposition of the circuit court was filed on or about November 1, 2004.

City of Myrtle Beach,
vs.
Burroughs and Chapin Company, Inc., Myrtle Beach Farms Company, Myrtle Beach Farms Company, Inc.
and State of South Carolina
No. 06-CP-26-1639
Horry County

The Complaint was filed on or about April 6, 2006. The State of South Carolina filed an Answer to that suit on or about May 23, 2006.

David E. Nelson and Marguerita G. Nelson
vs.
State of South Carolina
No. 06-CP-10-4675
Charleston County

The Complaint was filed on or about November 29, 2006. The State of South Carolina filed an Answer on or about January 3, 2007.

Palmetto Bluff Uplands, LLC
vs.
State of South Carolina
No. 04-CP-07-1610
Beaufort County

The Complaint was filed on or about September 2, 2004. The State of South Carolina filed an Answer to that suit on or about November 10, 2004. The final disposition of the circuit court was filed on or about June 20, 2005.

O. Grady Query,
vs.
Carmen Burgess and State of South Carolina
No. 03-CP-10-2436
Charleston County

The final disposition of the South Carolina Court of Appeals was filed on or about January 18, 2007.

Lynda B. Richards
vs.
State of South Carolina

No. 04-CP-10-4834

Charleston County

The Complaint was filed on or about November 18, 2004. The State of South Carolina filed an Answer to that suit on or about January 18, 2005.

James B. Saba and Cynthia W. Saba,

vs.

Kay F. Hancock, State of South Carolina, and John Doe and Mary Roe

No. 05-CP-07-2295

Beaufort County

The Amended Complaint was filed on or about June 5, 2006. The State of South Carolina filed an Answer to Amended Complaint on or about September 22, 2006.

Patrick M. Siau and Nancy S. Siau, as Co-Trustees of the Siau Qualified Personal Residence Trust Dated January 25, 2002, Raymond A. Pendleton and Jean C. Pendleton,

vs.

Kal Kassel, Millard Dozier and Robert M. Rogerson

vs.

Hagley Estates Property Owners Association, The County of Georgetown and the State of South Carolina

No. 03-CP-22-733

Georgetown County

The final disposition of the South Carolina Court of Appeals was filed on or about July 3, 2006.

Gene Simpo,

vs.

State of South Carolina and the State of South Carolina Acting by and Through the South Carolina Office of Ocean and Coastal Resource Management; Charlie Thiel

No. 06-CP-10-5029

Charleston County

The Complaint was filed on or about December 21, 2006. The State of South Carolina filed a Motion to Dismiss on or about January 22, 2007.

Patricia S. Tenney,

vs.

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management and the State of South Carolina

No. 2007-CP-07-0596

Beaufort County

A Complaint was filed on March 2, 2007. The State of South Carolina filed an Answer on or about April 25, 2007. An Amended Complaint was filed on May 1, 2007. The State of South Carolina filed an Answer to Amended Complaint on or about May 11, 2007.

Walcam Land Group, LLC

vs.

State of South Carolina

No. 04-CP-07-1609

Beaufort County

The Complaint was filed on or about September 2, 2004. The State of South Carolina filed an Answer to that suit on or about November 10, 2004. The final disposition of the circuit court was filed on or about June 20, 2005.

10 NOTICES

DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF STATE FIRE MARSHAL

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 72, National Fire Alarm Code, 2007 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Code of Laws, Section 23-9-60
South Carolina Rules and Regulations 71-8300.11(A)(1)
South Carolina Rules and Regulations 71-8308.4(A)
South Carolina Rules and Regulations 71-8309.4(A)

The Office of State Fire Marshal specifically requested comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal hereby promulgates this latest edition without amendment.

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

Notice of Drafting:

The State Board of Education proposes to amend State Board of Education Regulation 43-258.1, Advanced Placement. Interested persons may submit comments to Dr. Helena Tillar, Director of the Office of Curriculum and Standards, Division of Curriculum Services and Assessment, State Department of Education, 1429 Senate Street, Rutledge Building, Room 505, Columbia, South Carolina 29201 or by e-mail to htillar@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 23, 2007, the close of the drafting period.

Synopsis:

The Advanced Placement regulation was last adopted in June 1997. The change in regulation will allow teachers to earn endorsement by successfully completing professional development provided by the College Board, including online course work.

In order to allow teachers a greater level of flexibility and increase the professional development opportunities for teachers of Advanced Placement courses, it is recommended that the regulations be modified. The change will allow teachers to have AP endorsement added to their certificates by successfully completing forty-five hours of training provided by College Board-endorsed event(s). Currently, the regulation states that “each teacher of an Advanced Placement course shall have completed the appropriate Advanced Placement three graduate hour training program.”

The Office of Curriculum and Standards has worked jointly with the directors of the Office of Educator Preparation and the Office of Educator Certification in writing the recommended revision.

Legislative review of this proposal will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
 Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Notice of Drafting:

The Department is proposing to amend R.61-62, *Air Pollution Control Regulations and Standards*. Interested persons are invited to present their views concerning these amendments in writing to Anthony T. Lofton, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by July 25, 2007, the close of the drafting comment period.

Synopsis:

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60 and 63 throughout each calendar year. Recent Federal amendments include clarification, guidance and technical amendments regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories. The Department proposes to amend Regulations 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards* and 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories* to incorporate by reference recent Federal

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amendments promulgated during the period from January 1, 2006, through December 31, 2006. The Department may also propose typographical corrections and clarifications to R.61-62 as necessary.

The proposed amendments in this Notice will not be more stringent than the current Federal requirements. The proposed amendments will not require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 44-2-50

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend Regulation 61-92, *Underground Storage Tank Control Regulations*. Interested persons may submit comments to Robert L. Hutchinson, Underground Storage Tank Program, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007, the close of the drafting comment period.

Synopsis:

The Department desires to revise Regulation 61-92, *Underground Storage Tank Control Regulations*, to implement the secondary containment or financial responsibility and certification provision in Section 9003 (i), the operator training provision in Section 9010 (a) (1) and the delivery prohibition provision in Section 9012 of the Solid Waste Disposal Act, enacted by the Underground Storage Tank Compliance Act (Pub. L. 109-58, Title XV) Subtitle B (Sections 1521-1533) August 8, 2005, 119 Stat. 1092, Energy Policy Act of 2005 (Pub. L. 109-58) August 5, 2005, 119 Stat. 594, and to make stylistic changes requested by the U.S. Environmental Protection Agency so that codification of the State's UST Control Regulations can be finalized. Language in Regulation 61-92 will be updated to correlate with changes in the administrative appeals process pursuant to Act 397 (2006).

The Department is soliciting comments on: requirements for new underground storage tank systems; and manufacturer and installer financial responsibility and certification, consistent with the requirements in Section 1530; training requirements for operators and employees under Section 1524, and delivery prohibition implementation under Section 1527.

Legislative review of this amendment is required.

COMMISSION ON HIGHER EDUCATION

Chapter 62

Statutory Authority: 1976 Code Section 59-111-310, et seq.

Notice of Drafting:

The Commission on Higher Education proposes to draft a new regulation that addresses the waiving of tuition for residents who have attained the age of sixty. Interested persons may submit comments to Mr. Gary Glenn, Associate Director of Finance, Facilities, & MIS; S.C. Commission on Higher Education, 1333 Main St., Suite 200, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on July 27, 2007.

Synopsis:

The General Assembly passed the “Free Tuition for Residents Sixty Years of Age” (Section 59-111-310) that authorized public colleges or universities to permit legal residents of South Carolina who have attained the age of sixty to attend classes for credit or noncredit on a space available basis without the required payment of tuition. Section 59-111-330 requires the Commission on Higher Education to promulgate regulations necessary for implementation of the provisions of this article.

The proposed regulation will provide definitions institutions may use to ensure consistent application of the provisions of this article and will establish guidelines for institutional processing of inquiries and appeals.

Legislative review of this proposal will be required.

DEPARTMENT OF INSURANCE**CHAPTER 69**

Statutory Authority: 1976 Code Section 1-23-10 et seq., 38-3-110 and 38-73-1095.

Notice of Drafting:

The South Carolina Department of Insurance proposes to promulgate regulations regarding the discounts and credits calculated upon the rating factors set forth in S.C. Code Ann. Section 38-73-1095(C). Interested persons may submit comments in writing to Ms. Gwendolyn Fuller McGriff, Deputy Director and General Counsel, South Carolina Department of Insurance, Post Office Box 100105, Columbia, South Carolina 29202.

Synopsis:

Pursuant to S.C. Code Ann. 38-73-1095(C) rating plans for essential property insurance in the coastal and seacoast areas shall include discounts and credits for certain rating factors. S.C. Code Ann. 38-73-1095 authorizes the South Carolina Department of Insurance to promulgate regulations that define how these rating factors will qualify for credits and discounts. The regulations must specify the evidence the policyholder shall present to obtain the credit of discount.

The proposed regulation will require legislative review.

DEPARTMENT OF REVENUE**Chapter 117**

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307.3 concerning the application of the sales and use tax to the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration and the exception for facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. This regulation specifically concerns the exception and provides examples to illustrate when the exception does and does not apply.

It has been the longstanding position of the Department that in order for the exception to apply, the facility must serve as the owner’s or operator’s “place of abode” during the same times at which the remaining

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sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her “place of abode.”

The purpose of this regulation is to incorporate this longstanding position in this regulation and to provide examples to assist taxpayers in understanding this exception for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307.3 concerning the application of the sales and use tax to the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration and the exception for facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. This regulation specifically concerns the exception and provides examples to illustrate when the exception does and does not apply. The purpose of this regulation is to incorporate the Department’s longstanding position in this regulation and to provide examples to assist taxpayers in understanding this exception for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility.

DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-329 concerning the application of the sales and use tax to communication services. The purpose of this regulation is to summarize longstanding Department opinion concerning the taxability of various communications services and to attempt to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. For example, the Department has taxed communication services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website. Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future. The Department will continue to review such communication services on a case-by-case basis. For a detailed discussion of the statute, see Department advisory opinion SC Revenue Ruling #06-8.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-329 concerning the application of the sales and use tax to communication services. The purpose of this regulation is to summarize longstanding Department opinion concerning the taxability of various communications services and to attempt to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future. The Department will continue to review such communication services on a case-by-case basis.

DEPARTMENT OF REVENUE
Chapter 117
Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307 and SC Regulation 117-307.1 concerning the sales tax on accommodations and “additional guest charges. During the 2006 session of the General Assembly, Code Section 12-36-1110 was added to increase the general sales and use tax rate from 5% to 6% beginning June 1, 2007. This rate increase does not apply to the 7% sales tax imposed on sleeping accommodations under Code Section 12-36-920(A). However, the sales tax imposed on additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B), and all other sales of tangible personal property at a place providing sleeping accommodations, increased from 5% to 6% beginning June 1, 2007.

The purpose of this regulation proposal is to amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. The amendment would be effective June 1, 2007 – the effective date of the 6% tax rate.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007.

Synopsis:

During the 2006 session of the General Assembly, Code Section 12-36-1110 was added to increase the general sales and use tax rate from 5% to 6% beginning June 1, 2007. This rate increase does not apply to the 7% sales tax imposed on sleeping accommodations under Code Section 12-36-920(A). However, the sales tax imposed on additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B), and all other sales of tangible personal property at a place providing sleeping accommodations, increased from 5% to 6% beginning June 1, 2007.

The purpose of this regulation proposal is to amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. The amendment would be effective June 1, 2007 – the effective date of the 6% tax rate.

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DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering adding SC Regulation 117-337 to provide guidance as to the application of Code Section 12-36-910(D) which imposes a reduced sales and use tax rate “on the gross proceeds of sales or sales price of unprepared food which lawfully may be purchased with United States Department of Agriculture food coupons.”

Under the proposed regulation, the determination as to whether a sale of unprepared food qualifies for the reduced food tax rate is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the reduced food tax rate. For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

This regulation will explain which sales of food qualify or do not qualify for the reduced food tax rate.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007.

Synopsis:

The South Carolina Department of Revenue is considering adding SC Regulation 117-337 to provide guidance as to the application of Code Section 12-36-910(D) which imposes a reduced sales and use tax rate “on the gross proceeds of sales or sales price of unprepared food which lawfully may be purchased with United States Department of Agriculture food coupons.”

Under the proposed regulation, the determination as to whether a sale of unprepared food qualifies for the reduced food tax rate is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

This regulation will explain which sales of food qualify or do not qualify for the reduced food tax rate.

DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality. This regulation presently does not deem such transfers to be sales at

retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. The proposed amendment is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on July 23, 2007.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality. This regulation presently does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. The proposed amendment is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

18 PROPOSED REGULATIONS

Document No. 3131
State Board of Education
Chapter 43

Statutory Authority: Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400
et seq. (2004)

43–243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities

Preamble:

The State Board of Education proposes to amend R 43-243.1 in order to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and requirements of the Individuals with Disabilities Education Improvement Act of 2004 Regulation 34 CFR Parts 300 and 301.

Section-by-Section Discussion

Regulation 43-243 is being amended so as to align with the IDEA procedures for identifying children with developmental delays and with specific learning disabilities. Sections B(1) and B(2)(c)(1)–(9) of the current R 43-243.1 will be amended so that the title and definition of “Preschool Child with a Disability” will be replaced with “Developmental Delay.” The word “disability” will be replaced with “developmental delay” each time it is used in this section. This will align the category and definition with the federal category and definition.

Sections D(2)(b)–(d) and D(3)(d)–(f) are being removed so that the criteria for eligibility for the category of learning disabilities will align with the requirements in §§ 300.307–300.311 of Part B of the IDEA regulation.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the State Board of Education at its meeting on August 8, 2007, at 10:00 a. m. The location for the State Board of Education public hearing will be placed on the State Board Web site. There will also be public input hearings to solicit comments on the amendment to 24 S.C. Code Ann. Regs. 43-243, Special Education, Education of Children. To find out the date, times, and location for the State Board Hearing and the public input hearings click on the following link <http://ed.sc.gov/agency/stateboard/>. Persons desiring to make oral comments at the State Board 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 written comments on the proposed amendments by writing to Ms. Susan DuRant, Director, Office of Exceptional Children, Division of Curriculum Services and Assessment, State Department of Education, 1429 Senate Street, Rutledge Building, Room 808, Columbia, South Carolina 29201. Comments must be received no later than 5:00 p.m. on July 23, 2007. 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: None

Statement of Need and Reasonableness:

Description of Regulation: R 43–243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities

Purpose: 43–243.1, Criteria for Entry into Programs of Special Education for Students with Disabilities, is being amended in order to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and requirements of the Individuals with Disabilities Education Improvement Act regulation.

Legal Authority: The Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 *et seq.* (2004), and 34 CFR Parts 300 and 301.

Plans for Implementation: The amendment will be posted on the State Department of Education’s Web site for review and comment. The amendment will take effect upon approval by the State Board of Education and publication in the *State Register*. Legislative review is not required.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The IDEA requires states to ensure that all children with disabilities between the ages of three and twenty-one, inclusive, residing in the state have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. The amendment to R 43-243.1 is necessary in order to align state rules, regulations, and policies with the IDEA.

DETERMINATION OF COSTS AND BENEFITS: There will be no additional costs to the state or its political subdivisions. The amendment to the regulation will provide districts and schools with a better understanding of the requirements and purposes of the IDEA.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties of estimates.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendment to this regulation does not have any effect on the environment or public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED. There will be no detrimental effect on the environment or public health if this regulation is not amended.

Statement of Rationale: The proposed amendment reflects the recommendation by the U.S. Office of Special Education concerning the adoption of the federal regulation for the IDEA. The comments section of the federal regulations makes it very clear that one of the main efforts of the amendment was to allow individualized education program (IEP) teams more flexibility in developing and implementing appropriate IEPs under the Act. The amendment to R 43-243.1 would assist in aligning state regulations and policies with the intent of the IDEA where the focus is on improving outcomes for children with disabilities.

Text:

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

20 PROPOSED REGULATIONS

Document No. 3130
STATE BOARD OF EDUCATION
Chapter 43

Statutory Authority: Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400
et seq. (2004)

43–243, Special Education, Education of Students with Disabilities

Preamble:

The State Board of Education proposes to amend R 43-243 to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and requirements of the Individuals with Disabilities Education Improvement Act of 2004 regulation 34 CFR Parts 300 and 301. This regulation will replace current regulation 43-243 and 43-243.1.

Section-by-Section Discussion

Regulation 43-243, Special Education, the Education of Students with Disabilities, Sections A through T: repealed.

Amendment: Section I adopts the federal regulation of the Individuals with Disabilities Education Improvement Act regulation 34 CFR Parts 300 and 301 in its entirety; Section II gives the State Department of Education the authority to develop and amend the Policies and Procedures of the Office of Exceptional Children as necessary to meet USED approval.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the State Board of Education at its meeting on August 8, 2007, at 10:00 a. m. The location for the State Board of Education public hearing will be placed on the State Board Web site. There will also be public input hearings to solicit comments on the amendment to 24 S.C. Code Ann. Regs. 43-243, Special Education, Education of Children. To find out the date, times, and location for the State Board Hearing and the public input hearings click on the following link <http://ed.sc.gov/agency/stateboard/> Persons desiring to make oral comments at the State Board 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 written comments on the proposed amendments by writing to Ms. Susan DuRant, Director, Office of Exceptional Children, Division of Curriculum Services and Assessment, State Department of Education, 1429 Senate Street, Rutledge Building, Room 808, Columbia, South Carolina 29201. Comments must be received no later than 5:00 p.m. on July 23, 2007. 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: None

Statement of Need and Reasonableness:

Description of Regulation: R 43–243, Education of Children with Disabilities

Purpose: 43–243, the Education of Children with Disabilities, is being amended in order to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and

requirements of the IDEA regulation. Eligibility criteria will be developed as part of the Policies and Procedures by the Office of Exceptional Children.

Legal Authority: The Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 *et seq.* (2004).

Plans for Implementation: The amended regulation will be posted on the State Department of Education's Web site for review and comment. The regulation will take effect upon approval and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The IDEA regulation requires states to ensure that all children with disabilities between the ages of three and twenty-one, inclusive, residing in the state have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. The amendment of R 43-243 is necessary in order to align state rules, regulations, and policies with the IDEA regulation.

DETERMINATION OF COSTS AND BENEFITS: There will be no additional costs to the state or its political subdivisions. The amendment of the regulation will provide districts and schools with a better understanding of the requirements and purposes of the IDEA regulation.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties of estimates.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendment of this regulation does not have any effect on the environment or public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED. There will be no detrimental effect on the environment or public health if this regulation is not implemented.

Statement of Rationale: The proposed amended regulation reflects the recommendation by the U.S. Office of Special Education concerning the adoption of the federal regulation for the IDEA regulation. The comments section of the federal regulations makes it very clear that one of the main efforts of the amendment was to allow individualized education program (IEP) teams more flexibility in developing and implementing appropriate IEPs under the Act. The amendment of R 43-243 would assist in more closely aligning state regulations and policies with the intent of the IDEA regulation where the focus is on improving outcomes for children with disabilities.

Text:

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

22 PROPOSED REGULATIONS

Document No. 3129

COMMISSION ON HIGHER EDUCATION

CHAPTER 62

Statutory Authority: 1976 Code Section 59-58-10 through -140

62-6. Licensing Criteria.

Preamble:

The Commission on Higher Education is the licensing authority for nonpublic (private) institutions operating or soliciting in the State. From time to time issues concerning licensing standards come to the attention of the Commission. The regulations require as a prerequisite to licensing that out-of-state degree-granting institutions have recognized accreditation. The proposed change requires that in-state degree-granting institutions also obtain accreditation and that in-state non-degree-granting institutions have accreditation before they apply for degree-granting authority. The April 27, 2007, edition of the *State Register* published the Notice of Drafting

Section-by-Section Discussion:

62-6 The section is amended to require that within four years an in-state degree-granting institution gain candidate or applicant status as appropriate for accreditation and subsequently within eight years accreditation and that in-state non-degree granting institutions hold accreditation before they seek licensure to award degrees.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Commission on Higher Education, Nonpublic Postsecondary Institution Licensing, 1333 Main Street Suite 200, Columbia, SC 29201. To be considered, comments must be received no later than 4:30 p.m. on July 27, 2007. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed amendment to the regulation at a public hearing to be conducted by the Commission on Higher Education on August 2, 2007, at 10:30 a.m., in the Commission's Conference Room, 1333 Main Street, Suite 200, Columbia, SC 29201.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: Require that in-state degree-granting institutions attain accreditation.

Legal Authority: S.C. Code of Laws, Section 59-58-10 through -140

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

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

The current standards do not *require* that institutions become accredited. While "start-up" in-state institutions are rare, the Commission licensed two new institutions in 2004-2005. Individuals in increasing numbers contact the staff about seeking licensure for in-state degree-granting authority. Officials from several non-degree vocational training schools have inquired about degree-granting authority. Because of reservations about the ability of institutions to comply with requirements, the staff has in the past several years declined to move forward with the review of proposals from non-degree-granting to degree-granting and has returned as

insufficient two proposals for new, in-state, degree-granting institutions. This recent activity indicates that the Commission can expect more of these kinds of requests in the future.

The provision will further protect consumers of private, postsecondary education in that accreditation provides an additional level of oversight and accountability. Accreditation enhances the changes of transfer of credit to other institutions and acceptance of credentials by employers.

DETERMINATION OF COSTS AND BENEFITS:

There are no projected costs associated with the proposed change. Licensing standards should be consistent with out-of-state and in-state institutions and should be fashioned to protect consumers of private, postsecondary education.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

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

None.

Statement of Rationale:

The purpose of the revision is to align the accreditation requirement for in-state institutions with out-of-state institutions, to provide additional accountability and credibility that is associated with accreditation and thereby provide additional consumer protection for consumers of private, postsecondary education.

Text:

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

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Document No. 3108
CLEMSON UNIVERSITY
LIVESTOCK POULTRY HEALTH COMMISSION
CHAPTER 27
Statutory Authority: Chapter 4, Title 47, 1976 Code

27-1020. Intrastate Movement of Certain Animals

Synopsis: Due to an error in 27-1020(2)(b) of text being left out, the regulation is not in compliance with CFR79.6, Consistent State Status for Scrapie. Maintaining State Status for Scrapie will allow South Carolina sheep producers to move their animals in interstate commerce without additional restrictions which apply to animals from non-consistent states.

Instructions: Delete 27-1020 Sheep and Goats 2. a. and b. and replace with the following:

Text: 27-1020 Intrastate Movement of Certain Animals

2. Official identification is required upon change of ownership of all sheep and goats of any age not in slaughter channels and any sheep over 18 months of age as evidenced by eruption of the second incisor such that the animal may be traced to its flock of birth; provided however:

a. Commercial goats in intrastate commerce that have not been in contact with sheep are exempt from this identification requirement. If there is a case of scrapie in a commercial goat in South Carolina that originated in South Carolina and cannot be attributed to exposure to infected sheep, or if there is an exposed commercial goat herd in South Carolina, then this exemption is automatically revoked upon publication in the State Register that such disease has been detected. The Director shall proceed expeditiously to publish such notice, but in no case shall such notice be published more than 90 days after detection of such disease.

b. Commercial whitefaced sheep or commercial hair sheep under 18 months of age in intrastate commerce are exempt from this identification requirement. If there is a case of scrapie in the exempted class that originated in South Carolina, then this exemption is automatically revoked upon publication in the State Register that such disease has been detected. The Director shall proceed expeditiously to publish such notice, but in no case shall such notice be published more than 90 days after detection of such disease.

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

Statement of Rationale: These regulations are proposed to allow South Carolina to maintain its Consistent State Status for Scrapie under 9 CFR 79.6. Maintaining Consistent State Status will allow South Carolina sheep and goat producers to move their animals in interstate commerce without additional restrictions which apply to animals from non-consistent states. These regulations represent the minimum requirements specified for Consistent State Status.

Document No. 3083
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

Regulation 61-62, *Air Pollution Control Regulations and Standards* and the *South Carolina Air Quality Implementation Plan (SIP)*

Synopsis:

On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone

(Clean Air Interstate Rule)” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units” (also referred to as CAMR), respectively.

CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the *Federal Register* on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap-and-trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006. Due to our lengthy regulation development process, the Department has informed the EPA that our SIP and 111(d) plan will not be submitted to them by their deadlines. The EPA has already finalized a Federal Implementation Plan (FIP) and 111(d) Plan for states not meeting the deadline. However, the EPA has assured the Department that it will withdraw its FIP and 111(d) Plan when the Department finalizes and submits its SIP and 111(d) Plan to them.

The amendments of Regulation 61-62, *Air Pollution Control Regulations and Standards*, are necessary to comply with Federal rules. The Department has used its discretion to make the CAMR more stringent than the Federal rule by potentially retiring unused mercury allowances instead of providing them to affected utilities. Therefore, legislative review is required.

Discussion of Revisions:

Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards

SECTION CITATION:	EXPLANATION OF CHANGE
R. 61-62.60, Subpart Da	R. 61-62.60, Subpart Da, has been amended to incorporate by reference Federal amendments.
R. 61-62.60, Subpart HHHH	All sections except 60.4140, 60.4141, and 60.4142 have been incorporated by referencing the Federal Clean Air Mercury Rule.
R. 61-62.60.4102	A definition for “utility” has been added.

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- R. 61-62.60.4140 – 60.4142 The terms “allocate,” “reallocation,” “reimburse,” “distribute,” and “transfer” have been revised to be used consistently throughout the regulation. The word “utility” was changed to “Hg budget source” where necessary to clarify that allocations would be distributed to the Hg budget sources.
- R. 61-62.60.4140(a) The table in the Federal rule indicating the South Carolina Trading Budget has been modified to a text format to include only South Carolina’s annual budget.
- R. 61-62.60.4140(c) This section has been added to explain the “Public Health Set-aside” accounts whereby 25 percent of the State’s annual budget will be put into a special account inaccessible to the utilities unless specific requirements are met. Unused allowances are to be retired after 2023.
- R. 61-62.60.4140(c)(3) This paragraph has been added to require utilities to submit a mercury emissions report, by the stated date, on an annual basis to the Department.
- R. 61-62.60.4140(c)(4)(i) The date whereby the Department will transfer allowances from the Public Health Set-aside account to a utility’s compliance account has been established as February 15 following the pertinent control period.
- R. 61-62.60.4140(c)(4)(iv) This paragraph has been added to require utilities that submit revised reports that reflect a reduction in mercury emissions will return any extra mercury allowances to the Department.
- R. 61-62.60.4140(c)(5) This paragraph establishes the retirement date for allowances in the Public Health Set-aside as 2024.
- R. 61-62.60.4140(c)(6) This section creates the possibility of a mercury study funded by the sale of allowances from the Public Health Set-aside.
- R. 61-62.60.4141 This section establishes the timing for a four-year allocation period and the dates for submission of the allocations to the Administrator.
- R. 61-62.60.4141(a) This paragraph establishes November 17, 2006, as the firm date by which allowance allocations are to be submitted to the EPA for the 2010 through 2013 control periods.
- R. 61-62.60.4141(b)(2) This paragraph was deleted because the EPA is removing it from the Federal rule and suggested that the Department remove it also.
- R. 61-62.60.4142 This section explains how allowances will be allocated and what information will be used to calculate allocations.

Regulation 61-62.72, Acid Rain

SECTION CITATION:	EXPLANATION OF CHANGE
R. 61-62.72	The format of R. 61-62.72 has been revised to incorporate the Federal rule by reference. It also includes the revisions in subparts A and B that are a result of the Clean Air Interstate Rule.

R.61-62.96, Nitrogen Oxides (NO_x) Budget Trading Program General Provisions

SECTION CITATION:	EXPLANATION OF CHANGE
Title	The title has been changed to “NITROGEN OXIDES (NO _x) AND SULFUR DIOXIDE (SO ₂) BUDGET TRADING PROGRAM GENERAL PROVISIONS” to reflect the addition of the SO ₂ trading program into 61-62.96.
R. 61-62.96	Subparts A through I of R. 61-62.96 are being repealed and replaced by subparts AA through IIII. The date in which subparts A through I of R. 61-62.96 will be repealed allows time for EPA to reconcile the allowance accounts. All subparts except subpart EE and subpart EEEE have been incorporated by referencing the Federal Clean Air Interstate Rule.
Subparts AA, BB, CC, II, AAA, BBB, FFF, HHH, III, AAAA, EEEE (96.342 (c)(2)), FFFF, IIII	These subparts are being revised to incorporate nonsubstantive corrections promulgated by the EPA in the <i>Federal Register</i> on December 13, 2006 [71 FR HHHH, and 28606].
R. 61-62.96.140	The table in the Federal Clean Air Interstate Rule indicating the South Carolina NO _x Trading Budget has been modified to a text format to include only South Carolina’s annual budget.
R. 61-62.96.141(a)	The paragraph establishes the dates by which the Department must submit initial CAIR NO _x allowance allocations to the EPA for specific control periods.
R. 61-62.96.142(a)	The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, to state that heat input data will be obtained from the Administrator, and to revise the heat input adjustments from three categories to two categories.
R. 61-62.96.142(b) and (c)	The new unit set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
R. 61-62.96.143(a)	The table in the Federal rule indicating the South Carolina NO _x compliance supplement pool has been modified to a text format to include only South Carolina’s annual budget.

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Title	The title “CAIR SO ₂ Trading Program” has been added before Subpart AAA.
R. 61-62.96.201 through 96.288	These sections have been added to address the CAIR SO ₂ Trading Program General Provisions. This language incorporates the Federal Clean Air Interstate Rule by reference.
Title	The title “CAIR NO _x Ozone Season Trading Program” has been added before Subpart AAAA.
R. 61-62.96.302	The definitions of “electric generating unit” or “EGU” and “non-electric generating unit” or “non-EGU” have been added.
R. 61-62.96.302	The definitions of “fossil-fuel-fired,” “commence operation,” and “unit” were revised.
R. 61-62.96.304(a)(1)(ii)(A) and (B)	These paragraphs were added to clarify the non-EGU applicability requirements for units currently subjected to the NO _x SIP Call. The NO _x SIP Call trading program will be discontinued upon the initiation of the NO _x trading program for CAIR.
R. 61-62.96.304(a)(2) and (b)	This statement was added and references to (a)(1) changed to (a)(1)(i) to ensure that these portions of the section applied to EGUs only and not to non-EGUs.
R. 61-62.96.340(a)	The NO _x Ozone Season Trading Budget in EPA’s model rule was revised to include only the budget for South Carolina.
R. 61-62.96.340(b)	This paragraph was added to include the NO _x Ozone Season Trading Budget from the NO _x SIP Call for non-EGUs.
R. 61-62.96.341(a)	These paragraphs establish the timing by which the Department must submit initial CAIR NO _x allowance allocations to the EPA for specific control periods.
R. 61-62.96.341(b)	These paragraphs establish the timing by which the Department must submit CAIR NO _x allowance allocations for non-EGUs.
R. 61-62.96.341(b)(1)(ii) and (iii)	These paragraphs were added to state that the allocations will be made in accordance with section 96.342(e).
R. 61-62.96.341(b)(2)	This paragraph establishes the timing by which the Department must submit to the EPA CAIR NO _x Ozone Season allowance allocations for non-EGUs.
R. 61-62.96.341(b)(3)	This paragraph establishes the date by which the Department must submit new unit set-aside allocations to the EPA.
R. 61-62.96.342(a)(1)	The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, and to revise the heat input adjustments based on fuel types from three categories to two categories.

- R. 61-62.96.342(a)(1)(i) and (ii) These paragraphs were revised to clarify how the allowances for 2009 through 2012 would be determined for the CAIR NO_x units as per a comment from the EPA.
- R. 61-62.96.342(a)(2) Language was added to this paragraph to state that the best available heat input data will be used for units that were not otherwise subjected to 40 CFR part 75 for the year and that heat input data will be obtained from the Administrator.
- R. 61-62.96.342(b), (c) and (d) The new source set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
- R. 61-62.96.342(b)(3) This paragraph was added to allow the EPA to take allowances from the CAIR allocations for penalties under the NO_x SIP Call trading program if a utility did not have enough allowances for 2008.
- R. 61-62.96.342(e) This section was added to address the incorporation of non-EGUs into the CAIR NO_x Ozone Season trading program. It explains how allowances will be determined and establishes a new source set-aside for non-EGUs.
- R. 61-62.96.342(e)(1)(ii) This paragraph clarifies the heat input value that is to be used to determine allocations.
- R. 61-62.96.342(e)(3) This paragraph was revised to indicate that the Department will use the best available data to determine the heat input used to calculate allocations.
- R. 61-62.96.342(g)(2) The term “commences commercial operation” was changed to “commences operation.”
- R. 61-62.96.342(g)(4)(ii) The date that the Department will determine non-EGU new source set-aside allowances has been changed.

Instructions: Amend R.61-62 per each individual instruction provided below for 61-62.60, 61-62.72, and 61-62.96.

Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, subpart Da, is revised as follows:

Subpart Da - “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978”

The provisions of Title 40 CFR Part 60, subpart Da, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

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40 CFR Part 60 subpart Da			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 44	June 11, 1979	[44 FR 33613]
Revision	Vol. 48	January 27, 1983	[48 FR 3737]
Revision	Vol. 54	February 14, 1989	[54 FR 6663]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	February 14, 1990	[55 FR 5212]
Revision	Vol. 55	May 7, 1990	[55 FR 18876]
Revision	Vol. 63	September 16, 1998	[63 FR 49453, 49454]
Revision	Vol. 64	February 12, 1999	[64 FR 7464]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 66	April 10, 2001	[66 FR 18546]
Revision	Vol. 66	June 11, 2001	[66 FR 31177]
Revision	Vol. 66	August 14, 2001	[66 FR 42608]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 70	August 30, 2005	[70 FR 51266]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

Regulation 61-62.60, subpart HHHH, section 60.4101 through 60.4130 and sections 60.4150 through 60.4176, shall be added as follows:

Subpart HHHH - “Emission Guidelines And Compliance Times For Coal-Fired Electric Steam Generating Units”

The provisions of Title 40 CFR Part 60, subpart HHHH, sections 60.4101 through 60.4130 and sections 60.4150 through 60.4176, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

The following definition is added to Section 60.4102 Definitions:

Utility - a unit or a group of units located in South Carolina that are owned by a common entity and produce electricity for sale. If the unit is owned by two or more utilities, the Hg designated representative or the alternate Hg designated representative shall specify the primary utility for the unit. The primary utility will be the recipient of any Hg allowances allocated for this unit.

The remainder of Section 60.4102 remains unchanged.

Regulation 61-62.60, subpart HHHH, sections 60.4140 through 60.4142, shall be added as follows:

Hg Allowance Allocations

Section 60.4140 South Carolina Trading Budget

(a) The South Carolina trading budget for annual allocations of Hg allowances for 2010 through 2017 is 0.580 tons (18,560 ounces) per control period. The South Carolina trading budget for 2018 and thereafter is 0.229 tons (7,328 ounces) per control period.

(b) The Department will allocate Hg allowances to affected Hg budget sources according to 60.4142.

(c) (1) The Department will distribute allowances to the affected Hg budget sources as provided in Section 60.4142 equal to 75 percent of the Hg budget source's allocations for each control period in 2010-2017. The Department will distribute allowances to the affected Hg budget sources as provided in Section 60.4142 equal to 100 percent of the Hg budget source's allocations for each control period in 2018 and thereafter.

(2) The Department will establish a Public Health Set-aside account for each affected utility in the State for the 2010-2017 control periods. The Department will allocate allowances to the utility's Public Health Set-aside accounts equal to 25 percent of the utility's allocations for each control period in 2010-2017 as provided in section 60.4142. The allowances will be held in each utility's individual Public Health Set-aside account.

(3) On or before January 31 following the control periods 2010 through 2023, the total amount of a utility's Hg emissions, in ounces, for each Hg budget source subject to the requirements of this rule must be submitted to the Department for that control period by the utility. A utility that has a balance of zero allowances in its Public Health Set-aside account for 2018 or any year thereafter is not required to submit this report to the Department.

(4) For each control period in 2010 through 2023, the Department will transfer Hg allowances from a utility's Public Health Set-aside account to cover emissions that exceed its allocations for that control period, if necessary, based upon the Hg emissions reported according to paragraph (3) of this section. To be eligible to receive allowances from its Public Health Set-aside account, the utility must follow good operating practices and properly operate any air pollution control equipment whose primary or secondary function reduces mercury emissions.

(i) Before midnight of February 15, if it is a business day, or, if February 15 is not a business day, midnight of the first business day thereafter immediately following each control period in 2010 through 2023, the Department will transfer Hg allowances from the utility's Public Health Set-aside account to the affected utility's Hg budget source account as prescribed in section 61-60.4140(c)(4) above.

(ii) For each control period in 2010 through 2017, a utility is eligible to receive allowances from its Public Health Set-aside account, up to but not exceeding the number of allowances put in its Public Health Set-aside account during the same control period, less any allowances sold as per paragraph (6) of this section. Unused Public Health Set-aside allowances will be banked in the utility's Public Health Set-aside account.

(iii) For each control period in the years 2018 through 2023, any unused allowances in a utility's Public Health Set-aside account will be made available for use by the utility. To be eligible to receive allowances from its Public Health Set-aside account during the control periods in 2018 through 2023, the utility's Hg emissions must be greater than the allowances allocated to it for the specific control period in which its emissions exceeded its allocations, based upon the Hg emissions reported according to paragraph (3) of this section.

(iv) If the utility revises and resubmits its report of emissions, as required in paragraph (3) above, to the Department and to the EPA after allowances have been transferred to its affected Hg budget source account from its Public Health Set-aside account and reports fewer emissions, and the EPA has not reconciled the account, any excess allowances must be returned to the State for transfer back into the utility's

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Public Health Set-aside account within fifteen (15) days of the submission of the revised report of emissions or within ten (10) days after the date of reconciliation.

(5) In 2024, any allowances remaining in any Public Health Set-aside account will be permanently retired.

(6) The Department will form an advisory committee consisting of but not limited to representatives from the Department, utilities that receive Hg allocations, environmental groups, and academia from South Carolina.

(i) The advisory committee will advise and make recommendations to the Department as to the necessity of a State Hg study, the scope of the study, the projected annual cost and the number of years over which the study will be conducted, and the methodology for determining how the utilities will share the burden of providing allowances from the Public Health Set-aside accounts. Hg allowances from the utilities' Public Health Set-aside accounts may be sold by the Department to fund this study and related studies at any time before the retirement of allowances remaining in the Public Health Set-aside accounts in 2024. Funds from the sale of these Hg allowances will be placed in a restricted account, and the money will be used only to fund studies as determined necessary and relevant by the Department.

(ii) The Department and the advisory committee periodically may review any available data, to include but not be limited to the state of Hg control technology, the results of Hg deposition studies conducted within or outside the scope of the study funded by the sale of Hg allowances, and information regarding Hg contamination in surface waters and fish tissue in South Carolina. The Department may issue a report of the findings.

(7) Using the information in this Hg report issued as per (c)(6) of this section, the Department may determine if additional control technology should be required of specific units or facilities. If additional control technologies are required, the Department will impose these requirements through an order, consent decree, permit revision, or revisions to this rule pertaining to the installation and operation of control technology on existing and new coal-fired units. Also, the Department could propose revisions to the Phase II allocations. The order, consent decree, permit revision, or revision to this rule will specify the schedule for installing and operating the required control technology.

Section 60.4141 Timing Requirements for Hg Allowance Allocations.

(a) By November 17, 2006, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, and 2013.

(b) By October 31, 2010, and October 31 of each four years thereafter, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a) and (b), for the control periods in the fourth, fifth, sixth, and seventh years after the year of the applicable deadline for submission under this paragraph.

Section 60.4142 Hg Allowance Allocations.

(a) For a Hg allowance allocation under section 60.4141(a) and (b), the Department will allocate Hg allowances to each Hg budget source by summing the amount determined for each of the utility's Hg Budget units.

(b) Each Hg budget unit's baseline heat input will be determined using the single highest amount of the unit's heat input for the control periods that are five, six, seven and eight years before the first year of the period for which the Hg allowance allocation is being calculated, except as provided in paragraph (c) of this section.

Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(c) A unit's control period heat input for a calendar year under paragraphs (a) and (b) of this section will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data will be obtained from the Administrator.

(d) Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg budget unit to the total amount of baseline heat input of all such Hg budget units in the State and rounding to the nearest whole allowance as appropriate.

Regulation 61-62.72, Acid Rain, shall be replaced in its entirety to read as follows:

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS
REGULATION 61-62.72
ACID RAIN**

Subpart A - "General Provisions"

The provisions of Title 40 CFR Part 72, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	June 21, 1993	[58 FR 33769]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 60	May 17, 1995	[60 FR 26510]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 62	December 18, 1997	[62 FR 66278]
Revision	Vol. 63	October 27, 1998	[63 FR 57356]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 67	June 12, 2002	[67 FR 40394]
Revision	Vol. 67	August 16, 2002	[67 FR 53503]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]

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40 CFR Part 72 subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

Subpart B - “Designated Representative”

The provisions of Title 40 CFR Part 72, subpart B, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart B			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

Subpart C - “Acid Rain Permit Applications”

The provisions of Title 40 CFR Part 72, subpart C, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart C			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart D - “Acid Rain Compliance Plan And Compliance Options”

The provisions of Title 40 CFR Part 72, subpart D, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart D			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218, 60234]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart E - “Acid Rain Permit Contents”

The provisions of Title 40 CFR Part 72, subpart E, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart E			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

Subpart F - “Federal Acid Rain Permit Issuance Procedures”

The provisions of Title 40 CFR Part 72, subpart F, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart F			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

Subpart G - “Acid Rain Phase II Implementation”

The provisions of Title 40 CFR Part 72, subpart G, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart G			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart H - “Permit Revisions”

The provisions of Title 40 CFR Part 72, subpart H, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart H			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]

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Subpart I - "Compliance Certification"

The provisions of Title 40 CFR Part 72, subpart I, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart I			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Regulation 61-62.96, Nitrogen Oxides (NO_x) Budget Trading Program, shall be revised as follows:

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

**REGULATION 61-62.96
NITROGEN OXIDES (NO_x) AND SULFUR DIOXIDE (SO₂) BUDGET TRADING PROGRAM
GENERAL PROVISIONS**

The provisions of 61-62.96, Subparts AAAA through IIII, supersede the provisions of 61-62.96, "Nitrogen Oxides (NO_x) Budget Trading Program," Subparts A through I, in accordance with the following schedule:

For control periods 2009 and beyond, the provisions of 61-62.96, Subparts A through I, are repealed effective April 30, 2009.

CAIR NO_x ANNUAL TRADING PROGRAM

Subpart AA - "South Carolina CAIR NO_x Annual Trading Program General Provisions"

The provisions of Title 40 CFR Part 96, subpart AA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart AA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart BB - “CAIR Designated Representative For CAIR NO_x Sources”

The provisions of Title 40 CFR Part 96, subpart BB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart DD - [Reserved]**Subpart EE - “CAIR NO_x Allowance Allocations”****Section 96.140 South Carolina Trading Budget.**

The South Carolina trading budget for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 is 32,662 tons, and in 2015 and thereafter is 27,219 tons.

Section 96.141 Timing Requirements For CAIR NO_x Allowance Allocations.

(a) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(b) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(c) By October 31, 2009, and October 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations for new units from the new unit set-aside account, in a format prescribed by the Administrator and in accordance with section 96.142(a), (c), and (d) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.142 CAIR NO_x Allowance Allocations.

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(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations for each CAIR NO_x unit will be:

(i) The allowances allocated for the years 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x annual allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x allowance allocation under section 96.141(b), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the control periods for which the CAIR NO_x annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal to 97 percent for a control period of the tons of NO_x emissions in the State trading budget under section 96.140 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

(c) **New Unit Set-aside:** For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x allowances to CAIR NO_x units in the State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State trading budget under section 96.140.

(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period.

(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period in accordance with subpart HH of this regulation.

(4) The Department will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Department will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State trading budget under section 96.140, and rounded to the nearest whole allowance as appropriate.

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Section 96.143 Compliance Supplement Pool.

(a) In addition to the CAIR NO_x allowances allocated under section 96.142, the Department may allocate for the control period in 2009 up to 2,600 tons of CAIR NO_x allowances to CAIR NO_x units in the State. These allowances are referred to as the Compliance Supplement Pool.

(b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_x units shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with part 96 subpart HH of this regulation in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, determined in accordance with part 96 subpart HH of this regulation.

(c) For any CAIR NO_x unit in the State whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The Department will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the Department will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State’s compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

$$\text{Unit's allocation} = \text{Unit's adjusted allocation} \times (\text{State's compliance supplement pool} \div \text{Total adjusted allocations for all units})$$

Where:

“Unit’s allocation” is the amount of CAIR NO_x allowances allocated to the unit from the State’s compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the Department will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF - “CAIR NO_x Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GG - “CAIR NO_x Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

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40 CFR Part 96 subpart GG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HH - “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart II - “CAIR NO_x Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart II, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart II			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR SO₂ TRADING PROGRAM

Subpart AAA - “CAIR SO₂ Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart AAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart BBB - “CAIR Designated Representative for CAIR SO₂ Sources”

The provisions of Title 40 CFR Part 96, subpart BBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CCC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDD [Reserved]

Subpart EEE [Reserved]

Subpart FFF - “CAIR SO₂ Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GGG - “CAIR SO₂ Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHH - “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

44 FINAL REGULATIONS

40 CFR Part 96 subpart HHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart III - “CAIR SO₂ Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart III, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart III			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR NO_x OZONE SEASON TRADING PROGRAM

Subpart AAAA - “CAIR NO_x Ozone Season Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AAAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein, except as noted below.

40 CFR Part 96 subpart AAAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

The following definitions are added to Section 96.302 Definitions:

“Electric Generating Unit” or “EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(i), (a)(2) and (b).

“non-Electric Generating Unit” or “non-EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(ii).

The following definitions are revised in Section 96.302 Definitions:

“Commence operation” - (a) For units subject to 96.304 (a)(1)(i), (a)(2), or (b), “commence operation” means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber, except as provided in 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in 96.384(h).

(b) For a unit subject to 96.304 (a)(1)(ii), it means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in 40 CFR Section 96.5, for a unit that is a NO_x Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 40 CFR Section 96.5, for a unit that is not a NO_x Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under Section 96.304 (a)(1)(ii) shall be the unit's date of commencement of operation.

"Fossil-fuel-fired" - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2) or (b), "fossil-fuel-fired" means with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit subject to 96.304 (a)(1)(ii) it means with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995.

(2) For units that commenced operation on or after January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year.

(3) Notwithstanding the definition set forth in (b)(1) above, a unit shall be deemed fossil-fuel-fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.

"Unit" - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2), or (b), "unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit subject to 96.304 (a)(1)(ii), "unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Section 96.304 Applicability.

(a) Except as provided in paragraph (b) of this section,

(1) The following units in the State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

(i) **EGU Applicability:** Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

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(ii) Non-EGU Applicability:

(A) For units that commenced operation before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator that has a nameplate capacity greater than 25 MWe if any such generator produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.

(B) For units that commenced operation on or after January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr that:

(i) At no time served a generator producing electricity for sale; or

(ii) At any time served a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1)(i) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) This section applies only to units that are subject to section 96.304(a)(1)(i) or (a)(2). The units in a state that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:

(1)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Subpart BBBB - “CAIR Designated Representative for CAIR NO_x Ozone Season Sources”

The provisions of Title 40 CFR Part 96, subpart BBBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BBBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart CCCC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CCCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CCCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDDD [Reserved]

Subpart EEEE - “CAIR NO_x Ozone Season Allowance Allocations”

Section 96.340 South Carolina trading budget.

(a) For NO_x budget units defined as EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 is 15,249 tons and in 2015 and thereafter is 12,707 tons.

(b) For NO_x budget units defined as non-EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for 2009 and thereafter is 3,479 tons.

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Section 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) For NO_x Budget units defined as EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations for the new unit set-aside, in a format prescribed by the Administrator and in accordance with section 96.342 (c) for the control period in the year of the applicable deadline for submission under this paragraph.

(b) For NO_x Budget units defined as non-EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) (i) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator, for the control periods in 2009, 2010, 2011 and 2012.

(ii) The CAIR NO_x Ozone Season allowance allocations for 2009, 2010, and 2011 will be determined in accordance with section 96.342(e).

(iii) The CAIR NO_x Ozone Season allowance allocations for 2012 will be determined in accordance with section 96.342(e).

(2) By October 31, 2008, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season new unit set-aside allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342 (g) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.342 CAIR NO_x Ozone Season Allowance Allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for EGUs for each CAIR NO_x Ozone Season unit under section 96.341(a) will be:

(i) The allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x Ozone Season allowance allocation under section 96.341(a)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the first year of the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent of the tons of NO_x emissions in the State EGU trading budget for a control period under section 96.340 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(3) CAIR NO_x allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO_x Trading program under R. 61-62.96.54.

(c) **EGU New Unit Set-aside** - For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under section 96.340(a).

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(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the latter of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under section 96.340, and rounded to the nearest whole allowance as appropriate.

(e) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for non-EGUs for each CAIR NO_x Ozone Season unit under section 96.341(b) will be:

(1) For a CAIR NO_x Ozone Season allowance allocation under section 96.341 (b)(1), the allowances will be determined as follows:

(i) For the control period for the years 2009, 2010 and 2011, the allocations will be determined using the unit's baseline heat input equal to the average of the two highest amounts of the unit's heat input for the control period in the years 1999, 2000, 2001, 2002, and 2003, or, if a unit only operated during one of these control periods, the heat input during the single year of operation.

(ii) For the control period for 2012, the allocations will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years in 2004 and 2005.

(2) For a CAIR NO_x Ozone Season allowance allocation under section 96.341(b)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the first year of the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated.

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR part 75 to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(f) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (e) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent for a control period of the tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (f)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (f)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(g) **Non-EGU New Unit Set-aside** - For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (h) of this section. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before February 1 before the

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first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (g)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (g)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (g)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(h) If, after completion of the procedures under paragraph (g)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (f) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (f) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b), and rounded to the nearest whole allowance as appropriate.

Subpart FFFF - "CAIR NO_x Ozone Season Allowance Tracking System"

The provisions of Title 40 CFR Part 96, subpart FFFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FFFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GGGG - “CAIR NO_x Ozone Season Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GGGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHHH - “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHHH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart IIII - “CAIR NO_x Ozone Season Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart IIII, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart IIII			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Fiscal Impact Statement:

Existing staff and resources will be utilized to implement these amendments.

Statement of Need and Reasonableness:

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

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DESCRIPTION OF REGULATION:

Purpose: On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)” (also referred to as CAIR), and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units” (also referred to as CAMR), respectively.

CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the *Federal Register* on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap-and-trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with CAIR allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIP and 111(d) Plan. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006. Due to our lengthy regulation development process, the Department has informed the EPA that our SIP and 111(d) plan will not be submitted to them by their deadlines. The EPA has already finalized a Federal Implementation Plan (FIP) and 111(d) Plan for states not meeting the deadline. However, the EPA has assured the Department that it will withdraw its FIP and 111(d) Plan when the Department finalizes and submits its SIP and 111(d) Plan to them.

Legal Authority: The legal authority for Regulation 61-62 is Section 48-1-10 et seq., S.C. Code of Laws.

Plan for Implementation: The amendments will take effect upon approval by the Board of Health and Environmental Control and the General Assembly, and publication in the *State Register*. The amendments will be implemented by providing the regulated community with copies of the regulation.

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

The regulation is needed and is reasonable because it fulfills the Department’s obligation to submit revisions to the State Implementation Plan (SIP) incorporating the finalized CAIR published by EPA on May 12, 2005, and to submit a 111(d) plan incorporating the finalized CAMR published by EPA on May 18, 2005. Most of EPA’s finalized rules were incorporated; however, the Department is exercising its discretion by proposing options to the model rule that have been negotiated with stakeholders and are therefore better suited to South Carolina’s needs.

DETERMINATION OF COSTS AND BENEFITS:

These revisions are being made to comply with a Federal mandate. The Department has worked with stakeholders to determine the best approach to implementing these regulations. For example, the Federal CAIR proposes an allowance reallocation schedule every five years, with the initial heat input at the beginning of the rule implementation used in the determination of allowances received. To be more responsive to changes in the market, the Department and the affected regulated community agreed on a four-year allocation schedule that utilizes the most current heat input data to determine the allowances received. This allows new facilities to enter into the programs more quickly, provides time for the regulated community to be responsive to changes, and considers changes in the regulated community's need for the allowances.

The Federal CAMR provides for a budget of mercury allowances that are distributed to coal-fired utilities in the State free of charge. These allowances can be sold or traded to other utilities participating in the EPA's cap-and-trade program, or they can be used by the utility to which they were given. Because South Carolina was allocated more allowances than historical data indicate that our utilities need and sixty water bodies in our State have fish consumption advisories because of mercury pollution, the Department is establishing a "Public Health Set-aside" whereby twenty-five (25) percent of the allowances provided to each utility will be held in a special account. Each utility will have access to those allowances only for compliance purposes during the calendar year in which they were assigned. Any remaining unused allowances at the end of a calendar year would be held in the account until 2018. In 2018 and thereafter, the allocation of mercury allowances for each utility is further reduced. The allowances for each utility that have accumulated in the Public Health Set-aside account will be made available to the utility only if emissions exceed the reduced allocations for the calendar years 2018, 2019, 2020, 2021, 2022, and 2023. At the end of the 2023 control period, any unused allowances in the utility's Public Health Set-aside account will be permanently retired.

The Department estimates that approximately 12.4% of the allowances in the State mercury budget for the 2010 through 2017 control periods will be permanently retired. These are allowances that the regulated utilities would have received under the Federal CAMR. Since the mercury allowances are currently valued at approximately \$2000.00 per allowance, this will result in a cost to the regulated utilities above and beyond the Federal CAMR. The estimated allowances to be retired represents approximately \$36,823,040.00 in money that could either be saved by the utilities by not having to buy allowances to meet compliance or by selling the extra allowances they do not need in order to generate revenue. While this seems like a great deal of money, the allowances considered in determining this amount are to be allocated and used over a period of time of twelve years or more. Considering this, the value of the allowances expected to be retired represents approximately \$2,630,000.00 each year. In addition, the nitrous oxide and sulfur dioxide emissions control equipment installed at coal-fired utilities as a requirement of CAIR also remove a significant amount of mercury. This co-benefit will result in fewer mercury allowances being needed by the utilities, and the Department expects many of the units with control technology to use significantly less mercury allowances than the Department allocates. These mercury allowances can be banked by the utilities for future use or sold to generate revenue.

While the rule to comply with the Federal CAMR that is being proposed by the Department will result in increased costs to the utilities, the Department believes that the benefits outweigh the costs. Mercury in South Carolina's waterways continues to be a major concern. As stated previously, sixty water bodies in the State currently have mercury fish consumption advisories. An advisory suggests a safe limit, or amount, of fish from the water body that a person can consume without suffering any harmful effects. When mercury enters the water, it can be changed to methylmercury by bacteria, which are consumed by larger organisms. The methylmercury accumulates and its concentration increases as it moves up the food chain. Eventually, the larger fish caught and eaten by humans contain large amounts of methylmercury. Methylmercury can cause harmful effects in all people, but unborn and young children are most susceptible because methylmercury affects the development of the nervous system and the brain. It can cause learning and motor skill disabilities.

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UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The revisions are designed to significantly reduce the emissions of nitrous oxides, sulfur dioxides, and mercury. Nitrous oxides contribute to the formation of ozone and particulate matter, and sulfur dioxide contributes to the formation of particulate matter. Airborne mercury falls to the earth and is deposited in bodies of water, where it can be converted into methylmercury. Methylmercury is consumed by fish, which are then eaten by people. All of the pollutants (nitrous oxides, sulfur dioxide, and mercury) have been shown to have detrimental effects on the health of humans. The significant reductions in the emissions of these pollutants will protect the health of the residents of South Carolina.

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

EPA has determined that the pollutants addressed by these rules cause an overwhelming detrimental effect on the health of humans. Ozone and particulate matter cause respiratory problems and illnesses, while mercury causes neurological disorders and has a greater affect on unborn babies and children. The EPA and the State believe that the environment and public health will benefit from implementing these rules to reduce the emissions of these pollutants.

STATEMENT OF RATIONALE:

These revisions have been promulgated in order to comply with a Federal mandate requiring states to lower emissions of nitrous oxides, sulfur dioxide, and mercury. Scientific studies have shown that nitrous oxides are a precursor to ozone and particulate matter, while sulfur dioxide is a precursor to particulate matter, and that these pollutants have serious negative health consequences to the public. These include lung damage, aggravated asthma, and even death. The pathway of mercury from the combustion of coal to our waterways, to fish, and finally to humans has been well documented. When humans consume fish containing methylmercury, the methylmercury is almost completely absorbed into the bloodstream and distributed to all tissues, including the brain. In pregnant women, the methylmercury can be passed to the developing fetus, where it can negatively affect brain development. In young children, it can cause problems with verbal memory, language skills, motor function, attention span, and visual-spatial abilities. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The Department has added some additional requirements that go beyond the scope of the Federal CAMR. This will result in an increased cost to the regulated community beyond the requirements in the Federal CAMR; however, the Department believes the public health benefits achieved by the further reduction of mercury emissions to the environment outweigh the increased costs to the regulated community.

In 2006, fish advisories for mercury were issued for sixty water bodies in the State. These advisories were issued because samples of fish tissue taken from these water bodies repeatedly showed elevated levels of methylmercury that could be harmful if consumed in quantities that exceed the amount recommended by the advisory. Decreasing emissions of mercury from coal-fired utilities in South Carolina should reduce the amount of mercury that affects the waterways of the State and should reduce the number of fish consumption advisories issued.

Document No. 3096

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S. C. Code Ann. Section 44-56-10 et seq. and Section 44-56-30.

R.61-79 Hazardous Waste Management Regulations**Synopsis:**

The Department has amended R.61-79 in order to adopt a federal rule that facilitates the recycling of mercury by including mercury-containing equipment as part of the Universal Waste Rule at R.61-79.273. This rule was published in the Federal Register at 70 FR 45507 on August 5, 2005. This rule relaxes current regulation below the existing state level. See Discussion of Revisions below and Statements of Need and Reasonableness and Rationale herein.

The United States Environmental Protection Agency (EPA) has promulgated amendments to 40 CFR 260 261, 264, 265, 268, 270 and 273 throughout the last calendar year. Recent federal amendments support mercury recycling.

A Notice of Drafting for the proposed amendment was published in the State Register on May 26, 2006. A Notice of Proposed Regulation providing opportunity for public comment was published in the State Register as Document No. 3096 on November 24, 2006. Notice was also published on the Department's Regulatory Information Internet site in its monthly Regulation Development Update, and on the DHEC Land and Waste Management Internet site. DHEC also completed mailings to approximately 200 interested companies and citizens. Staff conducted an informational forum on January 4, 2007. No comments were received during the public comment periods or at the informational forum. The Department's Board approved these regulations on February 8, 2007.

Discussion of Revisions:

Revisions are made to conform R.61-79 to reflect relaxed federal amendments to 40 CFR 260 through 273 as of August 5, 2005.

260.10 Definitions equipment"	Mercury Rule: Replace "Universal Waste"; add "Mercury-containing
261.9(c)	Mercury Rule: Revise (c)
264.1(g)(11)(iii)	Mercury Rule: Revise (iii)
265.1(c)(14)(iii)	Mercury rule: Revise (iii)
268.1(f)(3)(iii)	Mercury Rule: Revise (iii)
270.1(c)(2)(viii)(C)	Mercury Rule: Revise (C)
273.1(a)(3)	Mercury Rule: Revise (a)(3)
273.4	Mercury Rule: Revise lead in, (a), (b), and (c)
273.9	Mercury Rule: Add definitions for Ampule, Mercury-containing equipment; revise definitions for Large Quantity Handler, Small Quantity Handler, and Universal Waste
273.13	Mercury Rule: Revise (c)
273.14(d)(1) and (2)	Mercury Rule: Revise (d)
273.32	Mercury Rule: Revise (b)(4) and (5)
273.33	Mercury Rule: Revise (c), (1) and (2); add (3), revise (4)
273.34	Mercury Rule: Remove (d); add new (d)(1) and (2)

Instructions: amend R.61-79 pursuant to each individual instruction provided with the text below:

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Text of Amendment:

The following sections have been added or revised. All other sections of R.61-79 will remain.

Revise 260.10 definitions to read:

260.10 Definitions:

Mercury-containing equipment means: a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function

Universal Waste means: any of the following hazardous wastes that are managed under the universal waste requirements of 273:

- (3) Mercury-containing equipment as described in 273.4; and

Revise 261.9(c) to read:

261.9 Requirements for Universal Waste

- (c) Mercury-containing equipment as described in 273; and

Revise 264.1(g)(11)(iii) to read:

264.1(g)(11)(iii) Mercury-containing equipment as described in 273.4; and

Revise 265.1(c)(14)(iii) to read:

265.1(c)(14)(iii) Mercury-containing equipment as described in 273.4; and

Revise 268.1(f)(3)(iii) to read:

268.1(f)(3)(iii) Mercury-containing equipment as described in 273.4; and

Revise 270.1(c)(2)(viii)(C) to read:

270.1(c)(2)(viii)(C) Mercury-containing equipment as described in 273.4; and

Revise 273.1(a)(3) to read:

273.1(a)(3) Mercury-containing equipment as described in 273.4; and

Revise 273.4 lead in, (a), (b) and (c) to read:

273.4 Applicability Mercury-containing equipment

(a) Mercury-containing equipment covered under this part 273. The requirements of this part apply to persons managing mercury-containing equipment, as described in 273.9, except those listed in paragraph (b) of this section.

(b) Mercury-containing equipment not covered under this part 273. The requirements of this part do not apply to persons managing the following mercury-containing equipment

(1) Mercury-containing equipment that is not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment becomes a waste;

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C or is listed in part 261, subpart D; and

(3) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment.

(1) Used mercury-containing equipment becomes a waste on the date it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

Revise 273.9 add definitions for Ampule, Mercury-containing equipment; revise definitions for Large Quantity Handler, Small Quantity Handler, and Universal Waste to read:

273.9 Definitions

Ampule means an airtight vial made of glass, plastic, metal, or any combination of these materials.

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of part 273:

- (1) Batteries as described in 273.2
- (2) Pesticides as described in 273.3
- (3) Mercury-containing equipment as described in 273.4; and
- (4) Lamps as described in 273.5.

Revise 273.13(c) to read:

273.13 Waste management

(c) Mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

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(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules; from that containment device to a container that meets the requirements of 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks ; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Revise 273.14(d)(1) and (2) to read:

273.14 Labeling/markings.

(d) (1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste - Waste Mercury Thermostat(s),-or "Used Mercury Thermostat(s)."

Revise 273.32(b)(4) and (5) to read:

273.32 Notification.

(b) This notification must include: ***

- (4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, and lamps); and
- (5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time

Revise 273.33(c), (1) and (2); add (3), revise (4)

273.33 Waste management.

(c) Mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules; from that containment device to a container that meets the requirements of 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in part 261, subpart C:

** (A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272.

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The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.**

Remove 273.34(d); add new (d)(1) and (2) to read:

273.34 Labeling/markings.

(d) (1) Mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

Fiscal Impact Statement: There will be minimal cost to the state and its political subdivisions to facilitate recycling of mercury-containing equipment. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness: This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment of R.61-79 Hazardous Waste Management Regulations.

Purpose: The purpose of this amendment is to maintain State consistency with relaxed regulations of the United States Environmental Protection Agency (EPA), which promulgated an amendment to 40 CFR 260, 261, 264, 265, 268, 270 and 273 on August 5, 2005, by publication in the Federal Register.

Legal Authority: South Carolina Hazardous Waste Management Act, S. C. Code Ann. Section 44-56-10 et seq. and Section 44-56-30.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, review by the General Assembly, and publication in the State Register as a final regulation, the amended regulations will be provided in hard copy and electronic formats to the community at cost through the Department's Freedom of Information Office and at the Bureau web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The mercury amendment enables relaxed storage requirements for generators to encourage the recycling of mercury-containing equipment by including mercury products in the Universal Waste Rule and facilitating its removal from the environment. This rule reflects relaxed current federal standards.

DETERMINATION OF COSTS AND BENEFITS: In amending the Federal regulations EPA has estimated the costs and benefits of the amendments as summarized below. The summaries are taken from the cited Federal Register notices. A significant regulatory action is defined as one that (5/26/98 in 63 FR 28630) "is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements...; or (4) raise novel legal or policy issues arising out of legal mandates... The inclusion of mercury-containing equipment in the Universal Waste Rule will save costs to generators, particularly for storage. It will also assist the State as well as public and private generators of mercury-containing equipment

to recycle and avoid landfill disposal and its subsequent problems. There will be a small cost savings to generators, and its political subdivisions to facilitate recycling of mercury-containing equipment. EPA estimated cost savings to generators of mercury-containing equipment to be about \$106 per generator per year.

There will be minimal cost saving to the state and its political subdivisions to facilitate recycling of mercury-containing equipment.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Regulating spent mercury-containing equipment as a universal waste will lead to better management of this equipment and will facilitate compliance with hazardous waste management requirements, preventing these items from entering municipal trash and thereby reducing emissions of mercury to the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: Less incentive to recycle mercury containing equipment, resulting in higher mercury content in municipal solid waste streams and waters of the state.

STATEMENT OF RATIONALE: This amendment reflects relaxation of current federal requirements, which the EPA encourages states to adopt, although states are not required to do so. Mercury-containing equipment was added to the universal waste rule to provide flexibility for its management so that it may be collected and recycled rather than handled as municipal trash or tested prior to hazardous waste disposal. This amendment continues to protect human health and the environment.

Document No. 3084

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-180; 1-23-10; -110

R.61-55. Septic Tank Site Evaluation Fees

Synopsis:

Fees for septic tank site evaluations were initiated in the mid-1980's to supplement state appropriations; the fees were never intended to replace appropriated funds. These fees were set at an initial fee rate of \$40.00 per applicant; they were increased to \$60.00 per applicant in 1987. They were increased to \$100 in 1999. There have been no subsequent fee increases; nor have there been subsequent appropriations to this activity.

Septic tank permits issued have increased from an annual average of 18,000 in 1987 to an annual average of 24,500 for the past 5 years. There has been no increase in staff during this same period. While response times for septic tank permit applications fluctuate throughout the year, the average response time has increased three-fold during this same period. Budget reductions, escalating operating costs, increased personnel costs, and increased demand for services have diminished the program's ability to continue to function at current levels. Additional funding is needed to continue operation of the program in a timely, effective, and efficient manner. Proposed R.61-55, *Septic Tank Site Evaluation Fees*, incorporates a fee increase from \$100.00 to \$150.00. See Statements of Need and Reasonableness and Rationale herein.

Instructions: Replace SECTION III. FEES with this amendment of R.61-55.

Text of Regulation:

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R. 61-55. SEPTIC TANK SITE EVALUATION FEES

SECTION III. FEES

The Department shall charge a fee of \$150.00 to evaluate the site of a proposed individual sewage treatment and disposal system. This fee shall be paid prior to the evaluation of any site for which an application for a permit has been made.

Fiscal Impact Statement:

The Department estimates there will be no new costs imposed on the State or its political subdivisions by this regulation. There will be an increase from \$100 per applicant to \$150 per applicant for site evaluations.

Statement of Need and Reasonableness and Rationale:

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

DESCRIPTION OF REGULATION: R.61-55, Septic Tank Site Evaluation Fees

Purpose: The purpose of this action is revise R.61-55 to incorporate a necessary fee increase into the regulation.

Authority: South Carolina Code Section 44-1-180

Plan for Implementing: Upon approval by the S.C. General Assembly and publication in the *State Register*, revised R.61-55 will be immediately implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION REVISION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: Escalating operational costs and the lack of additional appropriated funds have rendered this \$100 fee inadequate for the program to continue functioning in a responsive and timely manner. This regulation revision incorporates a fee increase to cover the increased cost of providing this service. This will provide opportunity for public comment and input into the regulation revision.

DETERMINATION OF COSTS AND BENEFITS

Cost: There will be no fiscal or economic impact on the State or its political subdivisions. There will be an increase from \$100 per applicant to \$150 per applicant for site evaluations.

Benefit: The public had an opportunity to provide input into the revision of R. 61-55. The program will be able to continue service to the state's citizens in a timely, effective and efficient manner. The public's health and environment will be protected by the continued vigilance of regulatory oversight of this program.

UNCERTAINTIES OF ESTIMATES:

Regulation 61-55 will not create a burden for the public, the State, and its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The public's health and environment will be protected by the continued vigilance of regulatory oversight of septic tank permits and installations.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be possible detrimental effect on the environment and public health because the program will not have the resources to continue regulatory oversight of septic tank permits and installations in a timely, effective and efficient manner.

STATEMENT OF RATIONALE: The determination to revise this regulation was in response to the need for additional resources to operate this program in a timely, effective and efficient manner.

Document No. 3104
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
 CHAPTER 8

Statutory Authority: 1976 Code Section 6-9-40

Synopsis:

The South Carolina Building Codes Council proposes to modify the National Electrical Code, 2005 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, including proposed modifications. The modification provides an additional exception to allow the omission of arc-fault protectors on dedicated circuits in bedrooms serving smoke detectors only. These provisions will be established in regulations designated under Article 5—National Electrical Code.

Instructions:

Add new Article 5—National Electrical Code.

Text:

Article 5—National Electrical Code
 Regulation 8-500. National Electrical Code

NOTE- This regulation is identical to the National Electrical Code, 2005 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, except for the modifications referenced below.

8-501. Modifications.

Article 210.12 Arc-Fault Circuit Interrupter Protection

An additional exception was added to omit arc-fault protection in bedrooms for circuits serving smoke detectors only.

(A) Definition. An arc-fault circuit interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected.

(B) Dwelling Unit Bedrooms. All branch circuits that supply 125-volt, single-phase, 15-and 20-ampere outlets installed in dwelling unit bedrooms shall be protected by an arc-fault circuit interrupter listed to provide protection of the entire branch circuit.

(C) A circuit serving no outlets within the bedroom except the smoke detector shall not be protected by an arc-fault protector.

Fiscal Impact Statement:

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

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Statement of Rationale:

These regulations are based upon the scientific and technical expertise of the National Fire Protection Association (NFPA). For a discussion of the scientific and technical basis for this updated edition of the National Electrical Code, see www.NFPA.com. The modification above is based upon the technical expertise of the study committee established by the Building Codes Council pursuant to Section 6-9-40.

Document No. 3105
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
CHAPTER 71
Statutory Authority: 1976 Code Section 41-15-220

Synopsis:

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health is amending Regulation 71, Article I, Subarticle 3 to reflect changes since its promulgation.

Instructions:

Regulation 71, Article 1, Subarticle 3, SCRR 71-339

Replace text as indicated below

Text:

SCRR 71 – 339 Reporting fatalities and multiple hospitalization incidents to OSHA.

(a) Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Director of the South Carolina Department of Labor, Licensing and Regulation (LLR), Columbia, South Carolina, 29211. You may also call 1-803-896-7672 or use the OSHA central telephone number, 1-800-321-OSHA.

(b) Implementation. (1) If the LLR Office is closed, may I report the incident by leaving a message on OSHA's answering machine, faxing the LLR office, or sending an e-mail? No, if you can't talk to a person at the LLR Office, you must report the fatality or multiple hospitalization incident using 1-803-896-7672 or 1-800-321-OSHA.

(2) What information do I need to give to OSHA about the incident? You must give OSHA the following information for each fatality or multiple hospitalization incident:

- (i) The establishment name;
- (ii) The location of the incident;
- (iii) The time of the incident;
- (iv) The number of fatalities or hospitalized employees;
- (v) The names of any injured employees;
- (vi) Your contact person and his or her phone number; and
- (vii) A brief description of the incident.

(3) Do I have to report every fatality or multiple hospitalization incident resulting from a motor vehicle accident? No, you do not have to report all of these incidents. If the motor vehicle accident occurs on a public street or highway, and does not occur in a construction work zone, you do not have to report the incident to OSHA. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No, you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) Do I have to report a fatality caused by a heart attack at work? Yes, the LLR director will decide whether to investigate the incident, depending on the circumstances of the heart attack.

(6) Do I have to report a fatality or hospitalization that occurs long after the incident? No, you must only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.

(7) What if I don't learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agent(s) or employee(s).

(Cross Reference: 1904.39)

Fiscal Impact Statement:

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

Statement of Rationale:

There were no scientific or technical basis relied upon in developing the regulation.

Document No. 3132
DEPARTMENT OF LABOR, LICENSING AND REGULATION
 CHAPTER 71
 Statutory Authority: 1976 Code Section 41-15-210
 Article I, Subarticle 6
 Occupational Safety and Health Standards

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

In Subarticle 6 (General Industry):

Minimum standard for Subarticle 6, shall include revisions to Subpart A– General, section 1910.6, Subpart F– Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms, section 1910.66, and Subpart S– Electrical, Sections 1910.302, 1910.303, 1910.304, 1910.305, 1910.306, 1910.307, 1910.308, and 1910.399 as amended in FEDERAL REGISTER, Volume 72, Number 30, pages 7136 – 7221, dated February 14, 2007.

Copies of these final regulation changes can be obtained or reviewed at the South Carolina Department of Labor, Licensing and Regulation during normal business hours by contacting the OSHA Standards Office at (803) 896-7682.

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Document No. 3103
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 95

Statutory Authority: 1976 Code Section 40-37-10, et seq.

Synopsis:

The Department of Labor, Licensing and Regulation, Board of Examiners in Optometry, is repealing existing Regulations 95-1 through 95-20 and add new Regulations 95-1 through 95-6 in conformance with 2005 Act 135.

Instructions:

Repeal existing Regulations 95-1 through 95-20. Add new Regulations 95-1 through 95-6 as printed below.

Text:

95-1. Prescribing Contact Lenses as Practice of Optometry.

A. Prescribing contact lenses includes, but is not limited to, fitting lenses for either cosmetic or therapeutic purposes.

95-2. Advertisements.

A. An optometrist must identify him/herself as an optometrist or O.D. in all communications published or circulated, directly or indirectly, to the public.

B. An optometrist cannot designate him/herself as a specialist in any area of optometric practice unless he or she holds a certification from a creditable national organization recognized by the Board.

C. Assisting in obtaining fees under deceptive, false, or fraudulent circumstances includes, but is not limited to, providing optometric services to clients on behalf of, under the name of, or for wages from or in a fee splitting arrangement with a person, partnership, or corporation that is not in full compliance with South Carolina Code 40-37-390.

95-3. Licensure Requirements.

A. All schools or colleges of optometry that hold accreditation from the Accreditation Council for Optometric Education are approved by the Board as the basis for licensure. Schools or colleges accredited by other bodies will be considered on a case by case basis for approval.

B. A passing score on all parts of the examination conducted by the National Board of Examiners in Optometry and a passing score on the South Carolina Optometric Jurisprudence Examination are required for initial licensure.

95-4. Continuing Education.

A. Each licensee seeking renewal of a license must certify completion of forty (40) hours of continuing education (CE) for the biennial licensure period. Continuing education instruction must be on subjects relative to optometry.

B. Each licensee shall maintain records to support credits claimed. These records must be maintained for a minimum period of three (3) years during which copies may be requested by the Board for audit verification purposes.

C. Sixteen (16) hours, of the forty (40), must be pharmacology or pathology related.

D. CPR certification courses are approved for four hours; CPR re-certification courses are approved for two hours.

E. An unlimited number of CE hours can be from courses sponsored by national, regional, and state optometric organizations, optometry schools, or medical schools. Council on Optometric Practitioner Education (COPE)

approved courses are not automatically approved. All laser surgery education is considered general hours, not pharmacology. Hours obtained for CPR certification or CPR recertification are limited to the number of hours above (D) and qualify as unlimited CE.

F. No more than eight (8) of the forty (40) hours required can be from courses, live or online, sponsored by local optometric society groups and private businesses/organizations such as, physicians, optometrists, and optical industry shows. Four (4) hours, of this eight may be for courses that are not limited to the practice of optometry but which are directly related to health care programs such as HIPAA, Medicare and Medicaid, Ethics, and Jurisprudence. Additional hours of CE credit from this category of sponsors may be approved if the sponsor can demonstrate the course is COPE approved and a member of the State Board of Examiners of Optometry from the state wherein the course is offered is present to attest to the enforcement of attendance. The Board will accept COPE approved online CE courses without further review. Online CE courses lacking a COPE approval number must be pre-approved by the Board. Licensees are strongly urged to obtain this approval prior to registering and paying tuition for any such course.

G. General business, marketing, and management course are not approved for continuing education.

H. Correspondence and video/audio presentation are not approved for continuing education.

95-5. Licensure By Endorsement.

A. To demonstrate that he or she is currently licensed and practicing at the therapeutic level in another jurisdiction, an endorsement candidate should provide evidence of active practice for the twelve (12) month period immediately preceding application or in the alternative evidence of active practice during twenty four (24) of the last thirty six (36) months.

B. To demonstrate that he or she has practiced at the therapeutic level in another jurisdiction, an endorsement candidate should provide evidence that he or she was authorized by law to treat glaucoma in the other jurisdiction.

C. The Board recognizes satisfactory completion of the examination by the National Board of Examiners in Optometry offered at the time of first licensure (if 1985 or later), or satisfactory completion of the TMOD and satisfactory completion of the South Carolina Optometric Jurisprudence Examination as appropriate prerequisites for licensure by endorsement.

95-6. Professional Standards For Patient Records.

A. Licensees of this Board must comply with the South Carolina Physicians' Patient Records Act, S.C. Code 44-115-10, et seq., except for 44-115-130.

B. A licensee who contracts with the owners of the optometric practice in which he or she provides professional services so that the owner agrees to manage the records in compliance with the Act will be considered in compliance with this regulation.

Fiscal Impact Statement:

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

Statement of Rationale:

The purpose of Regulations 95-1 through 95-6 is to update regulations in conformance with 2005 Act 135.

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Document No. 3102
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF EXAMINERS IN PSYCHOLOGY
CHAPTER 100
Statutory Authority: 1976 Code Section 40-55-40

Synopsis:

The Department of Labor, Licensing and Regulation, Board of Examiners in Psychology, is revising existing regulations by repealing Regulation 100-5 and amending Regulations 100-1, 100-3, 100-4, 100-8 and 100-10 which includes all provisions governing specialty designations and amending other regulations accordingly.

Instructions:

100-1. Application for License to Practice Psychology.

100-1(A)(1) through 100-1(A)(4) Remains the same

100-1(A)(5) Replace text as indicated below

100-1(B) and 100-1(C) Remains the same

100-1(D) Replace text as indicated below

100-1(E) Delete in its entirety

100-2. Examinations. Remains the same

100-3. Renewal of License. Replace text as indicated below

100-4. Code of Ethics. 100-4(A) through 100-4(B) remains the same

100-4(C)(1) and 100-4(C)(2) Replace text as indicated below

100-4(C)(3) through 100-4(C)(8) remains the same

100-4(D), 100-4(E), 100-4(F), 100-4(G), 100-4(H), 100-4(I), 100-4(J), 100-4(K), 100-4(L) remains the same

100-5. Specialty Guidelines. Delete in its entirety

100-6. Advertising. Remains the same

100-7. Fees. Remains the same

100-8. Guidelines for the Employment and Supervision of Unlicensed Persons Providing Psychological Services.

100-8(A) Replace text as indicated below

100-8(B), 100-8(C), 100-8(D) Remains the same

100-9. Organization of the Board. Remains the same

100-10. Continuing Education Credits. 100-10(A), 100-10(B) Replace text as indicated below

100-10(B)(1) Replace text as indicated below

100-10(B)(1)(a) Replace text as indicated below

100-10(B)(1)(b) through (g) remains the same

100-10(B)(2) and 100-10(B)(3) remains the same

100-10(C), 100-10 (D), 100-10 (E) and 100-10 (F) remains the same

Appendix A. Remains the same

Appendix B. Remains the same

Text:

100-1. Application for License to Practice Psychology.

A. A candidate for licensure shall furnish the Board with satisfactory evidence that he or she:

(1)(a) Has had four years of combined academic training in psychology and qualifying experience including a doctor's degree in psychology from an educational institution which is accredited by a recognized regional accrediting agency of colleges and universities and whose program is accredited by a recognized national accrediting agency or meets criteria established by the American Association of State Psychology Boards (AASPB)(See Appendix A), or, in lieu of such degree,

(b) Holds a doctor's degree in a closely allied field from an educational institution which is accredited by a recognized regional accrediting agency of colleges and universities, provided that the Board finds the training obtained therein is substantially equivalent to that obtained in programs leading to the doctor's degree in psychology that meets AASPB guidelines;

(2) Has not within the preceding six months failed an examination given by the Board;

(3) Is competent in psychology as shown by passing such written and oral examinations as the Board deems necessary;

(4) Is not engaged in unethical practices;

(5) Has had two years of supervised professional experience, one year of which may be predoctoral. The supervisor shall be a psychologist in good standing who is licensed in the State or who holds an equivalent license in good standing from another state. Supervision shall be within the area of the supervisor's competency. There shall be a minimum of one hour per week of face to face supervision as set out in a supervision contractual agreement between the supervisor and supervisee. The Board shall be notified in writing by the supervisor of the details of the supervisory agreement, when applicable, prior to its initiation and at its conclusion. When the Board deems appropriate, the supervised experience may be waived.

D. The Board shall instruct the applicant to limit advertisement to the areas of established and demonstrated competence.

100-3. Renewal of Licenses.

A. Licenses shall be renewed biennially, on a date determined by the Board, upon submission of the renewal fee and the Biennial Renewal Form (which includes, but is not limited to, reports of current activities and information regarding any unlicensed personnel who are being supervised in the performance of work of a psychological nature by the licensed psychologist).

B. The renewal fee and the Biennial Renewal Form will be considered late at the end of the biennial licensure period. A late fee will be assessed, in addition to the renewal fee, if renewal materials are received within two months after the license renewal deadline date.

C. A license not renewed within two months after the license renewal deadline date will be considered as expired. Except under extraordinary circumstances approved by the Board, an expired license will be reinstated only with successful completion of a new application for licensure.

D. The Board reserves the right to waive annual renewal fees for psychologists who have retired from active practice or who document cases of extreme hardship.

100-4. Code of Ethics.

C. Competence.

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(1) Limits on practice. A psychologist shall limit practice and supervision to the area(s) of competence in which proficiency has been gained through education, training and experience as demonstrated to the Board.

(2) Accurate representation. A psychologist shall accurately represent areas of competence, education, training, experience and professional affiliations of the psychologist to the Board, the public and colleagues.

100-8. Guidelines for the Employment and Supervision of Unlicensed Persons Providing Psychological Services.

A. Qualifications. The supervising psychologist shall be licensed for the practice of psychology and have adequate training, knowledge and skill to render competently any psychological service which his/her supervisee undertakes.

100-10. Continuing Education Credits. A. Number of credits. Each licensed psychologist shall earn a minimum of twenty-four (24) approved continuing education credits during each two year biennial licensure period.

B. Types of credit. A minimum of twelve (12) continuing education credits must be accumulated from Category A offerings and a maximum of twelve (12) continuing education credits can be accumulated from Category B offerings. Psychologists can elect to earn all of their continuing education credits from Category A offerings.

(1) Category A experiences generally include formal activities wherein direct contact hours can be exchanged for continuing education credits on a one to one basis. Each offering under Category A should have a mechanism by which to measure the exchange of information, and, with respect to item (e) below, these offerings must be relevant to psychologist's area(s) of practice. It is the responsibility of the licensed psychologist to confirm completion of each educational experience completed under item (e) below. Category A generally includes, but is not limited to:

(a) Successful completion of a three (3) hour graduate course in psychology at a regionally accredited institution of higher learning; content of the course must be relevant to area(s) in which the psychologist practices;

Fiscal Impact Statement:

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

Statement of Rationale:

The purpose of the repeal of Regulation 100-5 is to recognize that the practice of psychology has evolved. Existing specialty descriptions do not identify the services provided by individual licensees in current terms and are no longer useful to the public. Allowing licensees to describe their practices in accurate terms, without regulation limitations, will improve communication to the public. The Board did not rely on scientific nor technical studies in the development of this regulation.

Document No. 3093

DEPARTMENT OF MOTOR VEHICLES

CHAPTER 90

Statutory Authority: 1976 Code Section 56-23-100

Article 3: Driver Training Schools

Synopsis:

Proposed regulation will replace and supersede Chapter 38, Article 3, Subarticle 7, Driver Schools, which was promulgated by the Department of Public Safety. Administration of the regulation has been transferred to the

Department of Motor Vehicles. The proposed regulation will place the responsibility for administering Driver Training Schools under the proper regulatory authority.

The General Assembly amended Sections 56-23-10, 56-23-40, 56-23-60, 56-23-70, 56-23-80 and 56-23-85. The amendments include the issuance of a license to an instructor for classroom only or behind the wheel training only, requires a ten thousand dollar (\$10,000) surety bond, requires records be made available at a permanent location in South Carolina for review and increases the temporary instructor fee to twenty dollars. Private secondary school instructors are also exempt from fees for an instructor permit. The regulations revise specifications for Driver Training Schools. The Department of Motor Vehicles must promulgate regulations to provide for the above changes.

Instructions: Add text of new Regulations 90-160 through 90-186.

Text:

90-160. Definitions.

- A. "Contract or Record of Agreement" means a form used by driving training schools to indicate the services offered to the person receiving instruction or education in the operation of a motor vehicle.
- B. "Department" means the South Carolina Department of Motor Vehicles.
- C. "Driver Training School" means a facility or legal entity which is in the business of training or educating persons to operate motor vehicles or which offers training or education to operate a motor vehicle for a fee or charge. Where appropriate, the term includes any owner, partner, officer, employee, or agent of the school.
- D. "Instructor Trainer" means a qualified person offering instruction to qualify individuals as driving training instructors.
- E. "Representative", "DMV Employee" or "Authorized Agent" means a duly authorized employee of the Department.
- F. "Student" means a person who has paid a fee to a driver training school for instruction or education in the operation of a motor vehicle or for instruction or assistance in the preparation to take a written examination for a drivers license or drivers permit to operate a motor vehicle.

90-161. General Application Requirements.

A. A person may not engage in the business of training or educating persons to drive or operate motor vehicles or offer training or education to conduct either the classroom or the behind the wheel, or both, for which a fee or charge is made, unless and until the person has obtained and holds a valid driving training school license issued by the Department of Motor Vehicles. A licensee must have a permanent location in this State and all motor vehicles used for behind the wheel instruction must be registered in this State. If licensed for classroom training only, the motor vehicle requirement shall be waived.

B. All persons, firms, associations, partnerships, corporations, or other legal entities to be licensed to operate a driving school, or to engage in the business of instruction in the driving of motor vehicles, or in the preparation of an applicant for examination given by the Department for an operator's license or permit, except as exempted by Section 56-23-20 of the South Carolina Code, as amended, must, prior to engaging in the driver training school business, secure a license from the Department. Application must be made on an approved form and must be submitted to:

The South Carolina Department of Motor Vehicles
 Post Office Box 1498
 Blythewood, South Carolina 29016-1498
 Attention: Driver Improvement

C. Applicants for an original driving school license, or driving instructor's license, must not conduct any business as a driving school or driving instructor until a license is issued by the Department.

D. Applicants for the renewal of a driving school license or driving instructor's license may continue to conduct business as a driver training school or as a driving instructor until the renewal application is granted or

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denied by the Department provided the renewal application is properly filed with the Department no later than ten (10) days from the expiration date of the license.

90-162. Driver Training School License Applicants Requirements.

- A. The Department shall not issue a driving school license to any applicant unless:
- (1) The applicant maintains an office in this State as described by these rules and regulations;
 - (2) The applicant is a resident of this State and/or is incorporated or otherwise authorized to do business in this State;
 - (3) The applicant has at least one (1) individual who is employed by the school and who is licensed by the Department as a driving instructor;
 - (4) Each applicant associated with a driver training school (owner, partner, or officer) is of good moral character and at least twenty-one (21) years of age; and
 - (5) Each applicant for a driver training instructor's license associated with a driver training school must have a valid South Carolina driver's license.
- B. No person may give driver instruction unless licensed by the Department as a driving instructor.

90-163. Driving School Requirements.

Every application for a driving school license and every driving school license renewal application must be accompanied by:

- A. A sample copy of the record of agreement or contract to be used between student(s) and school;
- B. An outline of the services to be performed by the licensee;
- C. Samples of forms or receipts used by the school;
- D. Schedule of fees for instruction;
- E. A complete list of manuals of instruction, course outlines, and other teaching materials used by the school;
- F. Proof of satisfactory completion of driver education and training by each instructor of the driver training school as required by Section 56-23-70 of the South Carolina Code of Laws;
- G. Proof of insurance coverage as required by these rules and regulations;
- H. A complete list of all owners and stockholders who have more than a ten percent (10%) interest in the corporation and their addresses;
- I. Any applicable license and
- J. Any applicable instructor's fees.

90-164. Driver Training School License Application.

- A. If the application for a driving school license is made by an individual, it must be signed by the individual. If the application is made by a partnership, the application must be signed by each general partner. If the application is made by a corporation, the application must be signed by an authorized corporate officer.
- B. Driving school licenses are not transferable. Any changes in ownership or controlling interest in the driving school business requires a new application to be filed with the Department immediately.
- C. No application for a driver training school will be accepted if the applicant has adopted any name similar to the name of an already licensed driver training school or if the applicant has adopted any name similar to any state or national organization. Use of the words "South Carolina" or "South Carolina State" in any driver training school's name is prohibited.
- D. The application must be subscribed under oath and shall be accompanied by an application fee of fifty (\$50.00) dollars. Prior to operation, each licensed driver training school also must obtain a corporate surety bond in the amount of ten thousand (\$10,000.00) dollars. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by a person having retained services of a driver training school.
- E. Driver Training School licenses may be renewed by application to the Department no later than ten (10) days after the expiration of the license. Any renewal application received later than ten (10) days after license's

expiration will be treated as a new application and the driver training school shall not continue operation. All licenses expire on June 30th of each year and no school is permitted to operate with an expired license.

F. Upon receipt of a license, the licensee must display the license in the school's principal place of business. The Department must be notified within thirty (30) days if there are any changes related to the driver training school. When any driving school ceases to operate, or if upon investigation it appears that the school has ceased to do business, the owner of the school must surrender the driving school license to the Department within ten (10) days. To be re-licensed, after the surrender of a school's license, the school owner must apply and meet the same requirements as a new school.

90-165. Driver Training School Motor Vehicle Liability Insurance Minimums.

A. No driving school may be licensed by the Department unless it maintains personal injury and property damage liability insurance on all motor vehicles owned, leased, or registered in the name of the driving school, while used in driving instruction, insuring the liability of the driving school, its certified driving instructors, and any person taking driving instructions, or any passengers within the vehicle, in the amount of fifty thousand dollars (\$50,000.00) because of bodily injury to or death of any one (1) person in any one (1) accident, and subject to such limits for one (1) person, one hundred thousand dollars (\$100,000.00) because of bodily injury or death to any two (2) or more persons in any one (1) accident, fifty thousand (\$50,000.00) because of injury or destruction to property of others in any one (1) accident.

B. Any insurance policy issued to cover the above liability limits must be in the name of the driver training school, its owner or a certified driving instructor with the school.

C. If licensed for classroom only, liability insurance is not required.

90-166. Liability Insurance Coverage Requirements; Notice of Cancellation.

A. The insured must be the driving school and any instructor or student or both, who uses any automobile for the purpose of driver training.

B. The policy must be issued by an insurance company authorized and licensed to do business in this state.

C. A certificate of insurance, signed by the insurer or insurance carrier, as required, evidencing that a policy has been issued in the designated amounts for the vehicles used in driving instruction listed on the policy containing as a minimum description of the vehicles, the make, model, year, and serial number or the vehicle identification number of vehicle. The Department must be listed in the policy as an additional insured. The certificate must be submitted with each application filed for an original or renewal driving school license.

D. If any policy of liability insurance is canceled by the insurance company, the insurance company and the driving school must immediately notify the Department in writing of the cancellation. The notification of cancellation of insurance shall be addressed to Driver Training School Supervisor, South Carolina Department of Motor Vehicles, Post Office Box 1498, Blythewood, South Carolina, 29016-1498. The driver training school must cease to use any motor vehicle to conduct driver training or instruction if that vehicle is covered by the policy that has been cancelled.

90-167. Driver Training School Instructor Qualifications.

A. Every person, in order to qualify as an instructor for a driving school, must, at the time of application, meet the following requirements:

- (1) At least twenty-one (21) years of age;
- (2) Of good moral character;
- (3) Hold a valid South Carolina drivers license;
- (4) Have no record of suspension of driving privileges for moving violations for the past three (3) years;
- (5) Have at least five (5) years of driving experience and no suspension for three (3) years;
- (6) Successfully complete a Departmentally approved driver training instructor course which includes as a minimum thirty-four (34) hours of formal classroom instruction in driver education and a minimum of six (6) hours of actual behind the wheel training in driving instruction;

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(7) Successfully complete a Departmentally approved written test which includes as a minimum testing of the ability of the applicant to give driver instruction to others and/or both written and demonstrative methods.

B. The Department may, in its discretion, grant an applicant a temporary permit, by special examination, provided the driver training school has one qualified, licensed instructor. The temporary permit is valid for six (6) months or until an instructor's course is offered. If during the six months the applicant is unable to take an instructor's course, the temporary permit may be renewed one (1) time for an additional six (6) month period.

90-168. Driving Instructors License Application Requirements.

A. Every driving instructor must possess a permit issued by the Department which indicates the full name of the instructor and the full name of the driving training school employing the instructor.

B. A driving instructor's permit will be valid only when the instructor is employed by a licensed driving school, and only at the driving school indicated on the license.

90-169. Driver Training Instructor Licensing.

A. Every driving instructor must carry the license upon his or her person at all times when engaged in conducting driving instruction in a motor vehicle. Upon request, the licensed driving instructor must display the license to any student taking instruction and to any law enforcement officer or employee or agent of the Department.

B. Every license issued will expire one year from the date of issue.

C. Application for a driving instructor's license must be made on a form furnished by the Department. The application must be accompanied by a fee of twenty (\$20.00) dollars.

D. A license may be renewed by making application to the Department on a form furnished by the Department. The renewal application must be submitted under oath and accompanied by a twenty dollar (\$20.00) fee.

E. An applicant for an original instructor's license must successfully pass an examination administered by the Department. This examination must include, as a minimum: a vision test measuring the applicant's visual acuity as required by the Department's regulations for a motor vehicle operator; a test of the applicant's ability to operate a motor vehicle; and a written examination covering South Carolina motor vehicle laws, safe driving procedures, and these regulations. Each applicant will be given three (3) opportunities in a calendar year to pass the examination, with a mandatory waiting period of at least five (5) working days between examinations.

F. Every licensed instructor shall be tested at least every four (4) years after successful completion of the initial examination.

G. If during a current driver training instructor's valid license year the driving instructor ceases to be employed by or associated with the driving school designated on his or her application or instructor's license, the driving school must immediately surrender the instructor's license to the Department. No new instructor's license will be issued to any individual until the individual has surrendered or otherwise accounted for all current outstanding instructor's licenses issued in the individual's name.

H. Any driving instructor who ceases employment with a driving school may not be employed as an instructor by another driving school until a new application is submitted and approved by the Department and a driving instructor's permit issued by the Department.

90-170. Registration, Inspection, and Required Equipment for Motor Vehicles Operated by Driver Training Schools.

A. Every motor vehicle used by a driver training school must be registered in South Carolina in the name of the driver training school.

B. Every motor vehicle must be submitted to the Department for an annual inspection prior to use, and

C. A driver training school cannot use a motor vehicle for BTW training until it has passed inspection.

90-171. Driver Training School Motor Vehicle Safety and Identification Requirements.

A. Every motor vehicle used by a driver training school in the course of driving instruction must be equipped with:

- (1) Dual controls on the foot brake and the clutch, if any, enabling the driving instructor to control the vehicle in case of an emergency;
- (2) Two (2) inside rear view mirrors, one (1) for the student and one (1) for the instructor's use (the vanity mirror located on the passenger side sun visor of most vehicles will not qualify as an additional rear view mirror for the instructor);
- (3) An outside rear view mirror on both sides of the vehicle;
- (4) All standard safety and operating equipment including tires, brakes, horn, and window glazing shall be in proper working order; seat belts for the operator of the vehicle, driving instructor, and all passengers;
- (5) Cushions for the proper seating of the driver of the vehicles.
- (6) If a driver training school undertakes to train persons who require special equipment to safely operate a motor vehicle, then vehicles used in the instruction of these persons must be equipped with the appropriate special operating equipment.

B. The vehicle must be identified as a driving school vehicle

- (1) With the name of the school and the words "Driver Training" readily identifiable from each side and;
- (2) The rear of the vehicle shall have the words "Driver Training" on each side
- (3) With lettering or printing at least two (2) inches tall and one-half (1/2) inches wide.

90-172. Driver Training School Facilities.

Each licensed driving school facility and any branch office must have an office which contains adequate facilities to conduct the business of giving instructions on driving motor vehicles and in the preparation of students for written and driving examinations given by the Department for an operator's license.

90-173. Driver Training School Physical Facilities, Hours of Operation, etc.

A. The office of any driving school must be identified by a sign reasonably visible to the general public and complying with any existing local government ordinances.

B. The office of a driving school must be a permanent structure and may not consist of or include a tent, a temporary stand, or a room or block of rooms in a hotel or rooming house. No driver training school facility may be located within 1500 feet of any building used as an office by the Department. No practicing may be done during the hours of 8:30 a.m. until 5:00 p.m., or normal working hours, on the facilities used as an office by any Department of the State engaged in the administration of any laws relating to motor vehicles. These provisions do not apply to advertising which may appear on vehicles owned by driver training schools.

C. The office of each driving school must consist of or have access to a permanent facility consisting of at least 200 square feet or more for an office, and a classroom facility must be available when classroom courses are offered by the driver training school. A classroom facility must contain seats and writing surfaces for no fewer than ten (10) students; adequate materials to complete the course of instruction for the specific driver training course being administered.

D. Each driving school must notify the Department of the location of its office(s) and the dates and hours of operation of the office(s). This information must be provided to the Department within ten (10) days prior to opening any office for business.

E. Upon receipt by the Department of a notice of an opening of a branch office, an authorized representative of the Department shall inspect the branch office(s) for compliance with the provision of these regulations, and the Department shall issue a branch office license which must be displayed in a prominent place.

F. When a licensed branch office is closed or its location is changed, the driver training school must return the branch office license to the Department within ten (10) days of the closing or moving of the branch office.

G. All driver training schools are required to have, or have access to, classroom facilities and the required equipment when classroom courses are offered. The Department will accept a letter from another driver

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training school or business stating: a driver training school has access to a business entity's facilities and equipment. The business entity allowing a driver training school use of classroom facilities will allow the Department to inspect these facilities to determine if the facilities and equipment satisfy the classroom requirements.

90-174. Driver Training School Course of Instruction.

The driver training school courses of instruction must be submitted for approval to the Department in the form of an outline and must include:

- A. All materials used for instruction;
- B. A copy of the curriculum;
- C. A list of the instructors names and;
- D. A classroom instruction schedule.

90-175. Driver Training School Student Instruction Record.

All licensed driver training schools must maintain a permanent record of instruction for each student. The record of instruction must contain:

- A. The name of the driver training school;
- B. The names of the students;
- C. The students' dates of birth;
- D. The number of the driver's license or permit held by the students;
- E. The type and dates of the instruction given; and the signature of the instructor.

90-176. Instruction Records and Files.

A. Each driver training school must furnish the student with a copy of their instruction record when the student completes the lessons contracted for or otherwise ceases taking instruction from the school. The copy must be signed by the instructor and by the student acknowledging that the record is correct.

B. All student instruction records must be kept on file in the school's office for a period of two (2) years after the student has ceased taking instruction at the school or completed the lessons contracted for.

90-177. Receipts for Fees Paid for Instruction.

A. A departmentally approved receipt must be issued to a student each time a fee is collected for either classroom or behind-the-wheel driver instruction or other services offered by the licensed driver training school, a driving school instructor, or agent or employee.

B. Approved receipts must be completed and contain:

- (1) The date the fee is collected,
- (2) The name of the student,
- (3) The total amount collected and,
- (4) The type of service given.

90-178. Driver Training School Contracts.

All written contracts or records of agreement by or between any driving school and any individual, partnership, corporation, firm, or association for the sale, purchase, barter, or exchange of any driving instruction or any classroom instruction, or the preparation of an application for an examination given by the Department for an operator's license or permit must differentiate between classroom and behind-the-wheel training and contain the following:

- (1) A statement indicating the agreed upon contract price per hour or lesson and terms of payment;

(2) The type of vehicle to be used in the training (either a standard vehicle equipped with a standard or manual transmission with extra wheel brake and clutch pedal or a vehicle with an automatic transmission with an extra brake pedal);

(3) A student instruction record attached to the contract showing the date of the lesson(s) for classroom or behind-the-wheel instruction,

(4) The student's signature on the instruction record acknowledging the lesson was received;

(5) The student's name;

(6) The dated receipt or receipt number for each lesson given and;

(7) The name and address of the driver training school.

90-179. Driver Training School Contracts, Permanent Records.

A. A driver training school must keep and make available for inspection by the Department all original written contracts and agreements affecting any student in the school files. These contracts must be kept on file for a minimum of two (2) years.

B. No driver training school may sell, transfer, trade, or otherwise dispose of any contract, portion of a contract, agreement of obligation, by or between any driving school and student unless the driving school has obtained the written consent of the student. Any contract or record of agreement for a student less than eighteen (18) years of age must be signed by a parent, guardian, or responsible adult in the presence of the instructor offering the instruction. Any record or contract between the driving school and any student which is lost, mutilated or destroyed shall be reported to the Department immediately in writing.

90-180. Items Required for Display in Driver Training School Facility.

The following shall be displayed in a prominent place in the driver training school's principal place of business:

A. The license issued by the Department to the school;

B. The names and driving instructor's license number(s) of all instructors employed by the school and;

C. The regular office hours.

90-181. Inspection of School Facilities.

Each driver training school must permit authorized agents of the Department to make periodic inspections of all school records, facilities, and vehicles used in driver training. During these inspections the owner(s), manager(s), or other person(s) in charge of the office must cooperate with the authorized representatives of the Department and, upon demand, must produce all student records described herein, instructional material, and any other items necessary to complete the inspection.

90-182. Driver Training School Complaints.

Any complaints relating to driver training schools or driver training school instructors must be in writing and signed by the complainant. The Department may ask the complainant to sign a sworn statement indicating the nature of the complaint and the identity of the complainant. The acceptance or the use of any statement by the Department will not be deemed an acknowledgement, admission, or charge by the Department of the matters contained in the statement.

90-183. Driver Training School Advertising.

No driver training school may publish, advertise, or intimate that a student is guaranteed or assured success in receiving a South Carolina driver's license.

90-184. Suspension, Revocation, Refusal to Renew Driver Training School License.

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The Department may suspend, revoke, or refuse to issue or renew a license of a driver training school for any of the following causes:

A. Conviction of any school partner, owner, officer, manager or employee of any crime involving dishonesty, deceit, violence, or moral turpitude when the crime relates to the operation of, or business conducted by, a driver training school;

B. The school makes a material false statement, or signs a false affidavit or conceals a material fact in connection with the application for a driver training school license or the application for a driver training instructor's license;

C. The school fails to comply or has violated any statutes providing for the licensing and regulation of driver training schools, or where the school has failed to comply or violated these regulations for the operation of driver training schools;

D. The school or any partner of the driver training school engages in fraudulent practices in securing for anyone a license to drive a motor vehicle. ("Fraudulent practices", as used herein, means any conduct or representation on the part of a school or any partner, officer, agent or instructor of a school which would give the impression that a license to operate a motor vehicle may be obtained by any other means than those prescribed pursuant to Chapters 1 and 5 of Title 56 of the South Carolina Code);

E. The school's owner(s) is(are) addicted to the use of alcohol, narcotics, or becomes incompetent to operate a motor vehicle, as defined in Title 56 of the South Carolina Code; where the school, its employees or instructors solicit business on within 1500 feet of any property occupied by the DMV Division field offices or the Department;

F. The school violates the South Carolina Unfair Trades Practices Act, in Chapter 5 of Title 59 of the South Carolina Code; or

G. There is no qualified instructor employed by the school.

90-185. Suspension, Revocation, Refusal to Issue or Renew a Driver Training Instructor's License.

The Department may suspend, revoke or refuse to issue an instructor's license for any of the following:

A. Conviction of the instructor of any crime involving dishonesty, deceit, physical violence or moral turpitude relating to the operation of or business conducted by a driver training school;

B. Making a material false statement or signing a false affidavit or concealing a material fact in connection with the operation of a driver training school or in connection with the application or renewal of a driver training instructor's license;

C. Failing to comply or with violating any statute in Title 56 relating to obtaining a motor vehicle driver's license;

D. Engaging in fraud or fraudulent practices in relation to securing a South Carolina driver's license for any person ("fraudulent practice, as used herein, includes, but is not limited to, any conduct or representation on the part of the instructor which gives the impression that a license to operate a motor vehicle may be obtained by any means other than those described in Chapter 5 of Title 56 of the South Carolina Code of Laws);

E. The instructor is addicted to the use of alcohol, narcotics or becomes incompetent to operate a motor vehicle as described in Title 56 of the South Carolina Code;

F. The instructor solicits business on or within 1500 feet of property occupied by the DMV Division of the Department, or by the Department.

G. All suspended or revoked driver instructor's licenses shall be returned immediately to the Department.

90-186. Judicial Review Procedures.

Upon notice of a suspension or revocation of a driver training school license or a driver training instructor's license the Department will allow a hearing, upon request, in accordance with the Administrative Procedures Act.

Fiscal Impact:

The Department of Motor Vehicles estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal.

Statement of Rationale:

The basis of the proposed regulation is to transfer authority from the Department of Public Safety to the Department of Motor Vehicles. The Department of Motor Vehicles shall promulgate regulations contained in this chapter.

All changes to the existing regulation text have been proposed based on the passage of Act No. 0328 of 2006.

Document No. 3094
DEPARTMENT OF MOTOR VEHICLES
 CHAPTER 90
 Statutory Authority: 1976 Code Section 56-23-100

Article 2: Truck Driver Training Schools

Synopsis:

Proposed regulation will replace and supersede Chapter 38, Article 3, Subarticle 9, Truck Driver Schools, which was promulgated by the Department of Public Safety. Administration of the regulation has been transferred to the Department of Motor Vehicles. The proposed regulation will place the responsibility for administering Truck Driver Training Schools under the proper regulatory authority.

The proposed regulations will include an additional Truck Driver Training Course. The course shall give instruction for a Class B License or Straight Truck/Passenger Bus instruction. Regulations have been expanded to increase the insurance liability requirements used by a school for behind the wheel instruction. A surety bond in the amount of ten thousand dollars (\$10,000) will also be required. A cancellation and refund policy will allow a student for a full refund if certain criteria are met. At least one motor vehicle used in a truck driver training school must be a tractor-trailer combination unit for class of training, which is offered for a Class A Commercial Driver's License or a straight truck or bus meeting definition of other commercial vehicles to carry out the instructional program of the school.

Requirements for application of a Truck Driver Training School Instructor includes the following proposed changes; each applicant must provide the Department with a certified SLED criminal background check, all classroom only instructors must be properly licensed to give classroom instruction and if during the current year of certification, the instructors driving privileges are suspended cancelled or revoked for any reason, the instructors certification is also considered to be suspended, cancelled or revoked. The proposed regulations will also make restrictions in advertising for Truck Driver Training School. The Department of Motor Vehicles must promulgate regulations to provide for the above changes.

Instructions: Add text of new Regulations 90-100 through 90-123.

Text:**90-100. Definitions.**

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- A. "Actively Enrolled" means any student who has not yet graduated from a driver training program or has failed to complete the driver training course.
- B. "Behind the Wheel" (BTW) means instruction where the student is actually operating the vehicle on public roads.
- C. "Catalog" means a booklet which must be given to each student prior to classes beginning and must be presented at the time the student signs the enrollment contract. Each catalog should be dated upon publication and revision. The catalog should contain at a minimum, a history of the truck driver training school, list of owners, officers, or directors, including addresses, licensing authority, compliant procedures, class start and stop times, attendance and disciplinary rules, course outlines, cost of training, books, supplies, fees, and all other charges the student would be expected to bear, minimum entrance requirements, graduation requirements, refund policy, placement policy, procedures for providing CDL test services.
- D. "Category" means classroom instruction, field instruction, BTW instruction, and observation while on the road.
- E. "Classroom" means student is in classroom environment learning principles and regulations about truck driver training.
- F. "Class B" means any single vehicle with a Gross Vehicle Weight Rating (GVWR) of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (10,000 pounds) GVWR.
- G. "Commercial vehicle" means a vehicle with a gross vehicle weight rating of 10,001 pounds or more, used in commerce.
- H. "Department" means the South Carolina Department of Motor Vehicles.
- I. "Enrollment contract" means any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase an educational course from a driver training school.
- J. "Fail to complete" means not complying with the hours of lessons or classes required by the Department with a grade in each category of at least 70 percent passing, not complying with the hours of lessons or classes required by the truck driver training school if those requirements are more stringent than the Departments' requirements or the cancellation of a student's course of study in truck driver training by any of the departmentally prescribed methods.
- K. "Field training" means off road training in and around the type commercial motor vehicle used in truck driver training.
- L. "Foreign Truck Driver Training School" means any enterprise located outside of South Carolina which solicits, advertises, or offers truck driver training to South Carolina residents.
- M. "Graduate" means any student who fully completes the required hours of lessons or classes required by the Department and discharges any and all other requirements or obligations established by the school as prerequisites for completing the full course of study.
- N. "Instructor" means an individual certified by the Department to give classroom and or BTW instruction to students enrolled in the school.
- O. "Hour" means an instructional period of sixty (60) minutes.
- P. "Observation" means when a student observes another student actually operate a motor vehicle on the public roads.
- Q. "Passing Grade or Successfully Complete" means a grade of at least 70 percent.
- R. "Permanent Type Building" means a building set on a foundation or is otherwise strapped to the ground and is in compliance with all zoning ordinances and codes and has been issued a "Certificate of Occupancy".
- S. "Prospective Student" means any person who seeks to enroll in a truck driver training course.
- T. "Range" means a student is on the skills range practicing backing and maneuvering exercises with a commercial motor vehicle.
- U. "Record" means a complete history of the enrollment of a student, including entrance qualifications. To include high school diploma or GED (if required by the school) or other test to indicate that the student benefit from the training purchased; motor vehicle report, criminal history records (if required) drug screen; grades, logs (minor violations are not accountable while student enrolled in school), attendance records, counseling remarks, permit issue date, CDL test history. "Records" also means appropriate documentation on instructor qualifications, statistical data required by the Department, and all other documents sufficient to justify the legitimate operation of the school.

V. "Recruiter/Salesperson" means any person who is employed by a truck driver training school, directly or indirectly, to recruit students for a truck driver training school. Recruiter includes persons who are employed by another person who is a direct employee or broker for a truck driver training school.

W. "Student" means any person who has signed a contract and enrolled with a truck driver training school and who has not cancelled that contract before the instruction begins.

X. "Total Contract Price" means the complete cost to the student for the enrollment contract including charges for registration, ancillary services, and any finance charges.

Y. "Truck Driver Training School" means any enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either in the classroom or behind-the-wheel, to operate or drive a truck-tractor combination unit, Class B/Straight Truck or Passenger Bus Training and charging a fee or tuition for those services.

90-101. Requirements and Application for Truck Driver Training School.

The Department shall not issue a license for a truck driver training school to any individual, partnership, group, association, or corporation, except as exempted by Section 56-23-20 of the South Carolina Code of Laws unless:

(1) The individual, partnership, group, association, or corporation, has at least one (1) commercial motor vehicle registered or leased in the name of the truck driver training school, and the motor vehicle(s) is/are inspected by a Departmental representative and for which the Department has received a certificate of insurance; and

(2) The individual, partnership, group, association, or corporation has at least one (1) person licensed by the Department as a truck driver training instructor for that truck driver training school.

90-102. Management, Foreign Applicant, and Application Requirements; Naming Restrictions.

A. Each manager or owner-operator of a truck driver training school or branch office must:

(1) Be at least twenty-one (21) years of age;

(2) Have no felony conviction or misdemeanor conviction involving moral turpitude preceding the date of application for a truck driver training school license;

(3) Have no revocation or suspension of their motor vehicle operators license in the three (3) years immediately preceding the date of application for a truck driver training school license.

B. Foreign Truck Driver Training Schools recruiting in South Carolina must provide to potential students:

(1) A copy of the foreign truck driver training school's operating license;

(2) A course description, including the topics taught and the overall length of the course;

(3) A list of the different motor vehicle equipment available for training;

(4) A copy of the catalog and contracts complete with all fees charged; and

(5) The names, addresses, and telephone numbers of persons who represent the foreign truck driver training school in South Carolina.

C. Each original application for a truck driver training school license must consist of a completed application for a truck driver training school license; a proposed plan of operation; proof of liability insurance; a bond in the amount of ten thousand dollars (\$10,000.00), sample copies of contracts and catalog; a check or money order in the amount of fifty dollars (\$ 50.00) made payable to the Department; and a certificate of assumed name.

D. No application for a truck driver training school license will be accepted if the applicant has adopted an assumed name similar to the name of a school already licensed by this State or adopting any name similar to any state or national organization. Use of the words "South Carolina" or "South Carolina State" in any school's name will not be allowed.

90-103. Truck Driver Training School License Renewal Application.

Renewal applications must be submitted for approval at least ten (10) days prior to the expiration date of the current, valid truck driver training school license. All licenses expire on June 30th of each year and no school is

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permitted to operate with an expired license. Applications for renewal may be accepted for up to thirty (30) days from the date of expiration. Any truck driver training school license which is lapsed for more than thirty (30) days shall be deemed permanently lapsed. Renewal of a permanently lapsed license must be by the same process required for an original truck driver training school application, including required forms and certifications.

90-104. Application Information Changes.

A truck driver training school must submit to the Department in writing within ten (10) days of any changes in the officers, directors, managers, or Classroom/BTW instructors of any truck driver training school or branch office. The Department must also be informed within ten (10) days of the addition or deletion of any motor vehicle(s) and the Department must receive a supplemental schedule of motor vehicles. The supplemental motor vehicle schedule shall be accompanied by a properly executed insurance certificate. If the truck driver training school has a change in ownership, the new owner must file an original application with the Department and be approved by the Department before the truck driver training school begins operation under new ownership. Failure to inform the Department of the required change shall be grounds for suspension or revocation of the truck driver training school license.

90-105. Truck Driver Training School Branch Offices.

Any truck driver training school or branch office which ceases to carry on the business of giving instruction in the driving of commercial motor vehicles or which has a change of ownership shall, within five (5) days, surrender its truck driver training school license and all truck driver instructor licenses issued to truck driver training instructors employed by the school.

90-106. Truck Driver Training School License Required.

No truck driver training school or branch is permitted to operate without a proper license.

90-107. Truck Driver Training School Location, Physical Facilities and Courses of Instruction.

Every school must maintain a principal place of business open to the public in a permanent type building. Truck driver training schools or their branch offices may not be located within 1500 feet of a building operated by the Department. No business may be solicited on property occupied or adjacent to a building operated by the Department. No truck driver training school may use any facility or any equipment used by the Department in the examination of persons for a drivers license. Exception is allowed for the purpose of CDL testing. Schools are warned use of official Department of Motor Vehicles offices are controlled by each manager at each location.

90-108. Facilities, Inspections, Course of Instruction, and Student Requirements.

A. Office Facilities

The truck driver training school office must be the principal place of business and be in the same location as, but physically separated from, the classroom facility and must be sufficient for conducting all business related to the operation of the school including, but not limited to: Facilities for conducting personal interviews; storage for all records required in the operation of the Truck Driver Training School; and secretarial or telephone answering service available for a minimum of six (6) hours a day between normal business hours (9:00 am through 5:00 pm).

B. Classroom Facilities

The classroom facility must meet the following requirements: a minimum overall size of not less than 120 square feet (including at least 70 square feet for the instructors and their equipment and 12 square feet for each student); lighting, heating and ventilation systems that are in compliance with all state and local laws and ordinances including, but not limited to, zoning, public health, safety and sanitation; seats and writing surfaces

for all students, blackboards visible from all seats; charts, diagrams, mock ups and pictures relating to the operation of commercial motor vehicles; traffic laws and correct driving procedures; a copy of the South Carolina driver's guide published by the Department for each student; and other textbooks and equipment deemed necessary by the instructor. Restroom facilities sufficient for the size of the class must be provided.

C. Display of Truck Driver Training School License

Every school and branch must display, in a prominent place in its office, licenses issued to the school by the Department for the school and the school's instructors.

D. Departmental Inspections

The Department must make at least an annual periodic inspection of a truck driver training school and any branch office(s) to determine compliance with these regulations. The inspection must be made during regular business hours by authorized representatives of the Department. Inspections must include, as a minimum, an examination of all school records, contracts, classroom facilities, training devices, instructional materials and CVSA inspections on all vehicles used in training. Each owner, partner, associate, corporate officer, or employee of any truck driver training school must cooperate with the Department's representative and, upon demand, must exhibit all records, instructional aids, equipment, and other items required for inspection. Refusal to permit an inspection is grounds for revocation of the truck driver training school's license. Records must be retained in the truck driver training school for at least three (3) years from the date of completion of a course of driver instruction, either as the result of completion and graduation or withdrawal from the program.

E. Truck Driver Training Course of Instruction for Class A Instruction

(1) To successfully complete truck driver training, licensed persons eighteen (18) or older must complete a course consisting of a minimum of 50 hours of instruction, 50 hours of field instruction, 16 hours of behind-the-wheel driver training on the highway, and 32 hours of behind-the-wheel observation on the highway. This is calculated on a 3:1 ratio. Of the hours for BTW and observation, if the student has less observation and more BTW, this will be allowable provided the total stills adds to forty-eight (48) hours.

(2) The classroom and behind-the-wheel instruction must consist of: laws relating to either interstate and/or intrastate commercial motor vehicle operations; pre-trip inspection of commercial motor vehicles and both safety and operational equipment; coupling and uncoupling of combination units, if the commercial motor vehicle to be driven includes such units; placing the commercial motor vehicle in operation; use of the commercial motor vehicle's controls and emergency equipment; operation of the inner-city and interstate highway traffic and passing; turning, backing, and parking the commercial motor vehicle; braking and slowing the vehicle by means other than application of the brakes; and completing driver's daily log books.

(3) Additional requirements include: the required 148 hours of instruction must include three (3) hours of the 16 hours of behind-the-wheel highway training must be completed by each student between dusk and dawn; one (1) commercial motor vehicle must be provided for each three (3) students during the highway training, provided four (4) students per commercial motor vehicle are permitted if the vehicle has been inspected and approved for such use by the Department. No more than nine (9) students per instructor will be allowed for field training. A driver's daily log must be completed by each student, to reflect the 148 hours of instruction and verified by the school. Any changes made to logs must be made by the student and initialed.

F. Truck Driver Training Course of Instruction for Class B or Straight Truck/Passenger Bus Instruction

(1) Requirements: Any licensed commercial truck driver training school may apply to the Department to conduct Class B Straight Truck or Commercial Straight Truck/Passenger Bus vehicle training.

(2) Vehicles must be marked as outlined in the Truck Driver Training School Regulations.

(3) Students and instructors must meet all the requirements for a regular Class A student who is applying for the school as found in the Truck Driver Training School Regulations. Instructors must have at least a Class A CDL, even for the Class B training program.

(4) Rosters: Student rosters and files must be kept separately from the Class A program.

(5) Minimum Curriculum:

(a) Classroom 50 hours

(b) Range 10 hours

(c) Behind-the-Wheel 10 hours, which must include at least 2 hours at night
70 hours total

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(6) Students who complete the Class B training who wish to upgrade to a Class A may do so with the original school, provided it is within six (6) months of the completion date of the original training. Students who upgrade, will be waived the classroom portion of the training.

(7) Under FMCSA interpretation, a bobtail cannot be considered as a Class B truck.

(8) All other Truck Driver Training School regulations apply.

G. Truck Driver Training School Student Requirements

Students above the age of eighteen (18), but less than twenty-one (21) years of age, must be informed by the owner(s) or officer(s) of the truck driver training school of the age restrictions and limitations established by the United States Department of Transportation and the Motor Carrier Unit of the Department of Motor Vehicles. Students must pass the United States Department of Transportation physical examination. Students must pass the DOT required pre-employment drug test and remain in a random selection pool while enrolled in the school. No student may operate a truck or commercial motor vehicle or a tractor-trailer combination unit upon any public street or highway unless the student has in his or her immediate possession a valid drivers license or learner's permit of the class or type required by Title 56 of the South Carolina Code and his or her United States Department of Transportation physical pocket card. Any student from out-of-state holding a valid license from that state will not be eligible for any type license or permit issued by the State of South Carolina.

H. Refresher Training

Schools may offer refresher training to individuals who have and hold a valid commercial driver license for the training sought. Refresher training courses must be at least forty (40) hours in length. If a student does not hold a valid commercial driver license, the student cannot be considered for refresher training.

I. Records of Training

School must have a student record for each student which must be included in the student's file. Student records must reflect each day's time and activity student was performing while in school. All information must be verified by the student and instructor. Student record must have Classroom, Range, BTW and Observation.

90-109. Motor Vehicles Used in Instruction.

Behind-the-wheel instruction of students in truck driver training school must be conducted in commercial motor vehicle(s) owned or leased by the truck driver training school. All vehicles used for the purpose of demonstration and practice must be equipped with seat belts for the operator and all passengers. Seat in the sleeper must have seatbelts and properly secured seat with a back. An outside rearview mirror on both sides of the vehicle, a heater, defroster and speedometer in working condition, and all other operational and safety equipment required by Title 56 of the South Carolina Code and applicable federal statutes. If the school operates trucks crossing the borders into another state, schools are required to have USDOT numbers on all trucks.

90-110. Truck Driver Training Motor Vehicles--Identification and Restrictions on Use.

A. Truck Driver Training School vehicles must bear conspicuously displayed signs with the words "Driver Training" in letters or printing not less than two (2) inches tall with a one-half (1/2) inch wide brush stroke. The signs must be displayed on both sides of the vehicle and the rear most portion of the vehicle. For vehicles which must operate at night, the words "Driver Training" must be reflective.

B. No school vehicle may be used to transport property or persons for compensation, other than properly enrolled students. No truck driver training school vehicles may be operated in another state unless the instructor, student, and vehicle are properly licensed to operate in that state. Schools are allowed to add weight, as in a dummy load in the trailer for training purposes.

90-111. Truck Driver Training School Motor Vehicle Registration, Insurance, and Inspection.

Each motor vehicle used by the truck driver training school for behind-the-wheel instruction must be properly licensed and registered in this State and bear a current inspection certificate.

90-112. Insurance and Inspection Requirements.

A. Each motor vehicle used by the school for BTW instruction must be insured against liability, by a licensed and certified insurance company, in the amount of at least three hundred thousand dollars (\$300,000.00) because of bodily injury or death to one (1) person in any one (1) accident, and subject to such limit for one (1) person and five hundred thousand dollars (\$500,000.00) because of bodily injury or death of two (2) or more persons in any one (1) accident, and three hundred thousand dollars (\$300,000.00) because of injury to or destruction of property of others in any one (1) accident. This insurance coverage must be secured on an annual basis. In the event coverage for any motor vehicle used for truck driver training is not renewed, the school must give written notice to the Department at least ten (10) days prior to the expiration date of the coverage. The insurance underwriter must file a certificate of insurance coverage with the Department. The Department must be listed as an additional insured on the certificate. Schools will also need to check to make sure they are in compliance with federal regulations on insurance requirements.

B. Each motor vehicle used by a truck driver training school must be listed and be CVSA inspected by a representative of the Department at least annually and at any other reasonable time as the Department may require.

90-113. Cancellation and Refund Policy.

A. A student is entitled to a full refund if one (1) or more of the following criteria are met:

(1) The student cancels the enrollment agreement or application within three (3) days after signing. In the event the cancellation notice is mailed, the postmark date on the envelope is evidence of the date of cancellation.

(2) The student does not meet the post secondary proprietary educational institutions minimum admissions requirements, accreditation requirements, or federal program requirements.

(3) The student's enrollment was procured as a result of misrepresentation in the written material utilized by the school.

(4) If the student has not visited the school prior to enrollment, and upon touring the school, or attending the first class, the student withdraws from the program within one (1) hour of the end of the first class.

B. A student withdrawing from the school's published program, after starting the instructional program is entitled to a pro-rata refund based upon the number of days, minus the application/enrollment/physical/drug testing fees. Any student completing more than fifty percent (50%) of the course curriculum is not entitled to a refund.

C. For extenuating circumstances, a pro-rata refund will be based upon the last day of attendance.

90-114. Special Requirements.

At least one (1) motor vehicle used in a truck driver training school must be a tractor-trailer combination unit for class of training which is offered for a Class A CDL or a straight truck or bus meeting definition of other commercial vehicles to carry out the instructional program of the school. This covers vehicles for Class A or Class B/Straight Truck Training.

90-115. Requirements for Application for Truck Driver Training School Instructor.

A. Each instructor of a truck driver training school or branch office providing behind the wheel instruction must be at least twenty one (21) years of age; hold a valid South Carolina Commercial Drivers License with all necessary endorsements for the motor vehicle equipment being operated; have at least three (3) years of behind-the-wheel truck driving experience and have logged at least 100,000 miles of over-the-road truck driving; or have completed a certified truck driver training school [consisting of a minimum of sixteen (16) hours of behind-the-wheel training; thirty-two (32) hours of observation; fifty (50) hours of field instruction; and fifty (50) hours of classroom instruction]; have no convictions of a felony or any crime of moral turpitude

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preceding the date of application (crimes which are automatic disqualifications are: murder, fraud, larceny, solicitation, manslaughter, distribution of illegal substance, criminal domestic violence, assault and battery, rape, lewd act, contributing to the delinquency of a minor, robbery, burglary, felony DUI, criminal issuance (fraudulent) of a bad check, false reports of a crime. Anyone listed on the Sex Offender Registry and anyone having been declared a habitual offender by the Department is automatically disqualified. All other convictions will be taken and decided on a case-by-case basis.); have no revocations, cancellations or suspensions of driving privileges in the three (3) years immediately preceding the date of application; have no convictions for traffic offenses involving moving violations totaling six (6) points in the year immediately preceding the date of application; and hold a current United States Department of Transportation physical certification. Driver training school instructors may have no more than six (6) points on their driving record while maintaining instructor certification. While using a defensive driving credit will help on the driving record, the Department will use the current total points computation, not adjusted points.

B. Each applicant must provide the Department with a certified SLED criminal background check at the time of application and annually thereafter. If a posting is on the SLED record, it must have adjudication on the charge, there cannot be any open charges on the record. If during the calendar year, an instructor is convicted of any crime, the Department must be notified in writing within twenty-four (24) hours of the conviction. If the conviction meets the criteria in 90-115(A) of these regulations, it will be cause for immediate revocation of the instructor certification. Each instructor must also submit to the Department a valid DOT long form and submit a new DOT physical long form upon each renewal cycle of the physical. If a change of medical status, a new form must be submitted.

C. All classroom only instructors must be properly licensed to give classroom instruction. Each school owner/director shall certify classroom only instructors by sending on school letterhead why said instructor is qualified, plus appropriate fee.

D. If during the current year of certification, the instructor's driving privileges are suspended, cancelled or revoked for any reason, the instructor's certification is also suspended, cancelled or revoked and the instructor must meet reapplication procedures. Instructors must notify the Department within twenty-four (24) hours and mail their instructor certification to the Department within ten (10) days.

90-116. Original Application for Truck Driver Training Instructor's License.

Each original application for a truck driver training instructor's license must consist of: a completed application, subscribed to under oath; a physical examination report completed and signed by a licensed physician; evidence of satisfactory completion of truck driver training and behind-the-wheel experience; and a check or money order for twenty dollars (\$20.00) made payable to the Department.

90-117. BTW Truck Driver Training Instructor's License Renewal Application.

Renewal applications must be made at least ten (10) days prior to the expiration of the current instructor's license. No instructor is permitted to operate with an expired license. All instructors' licenses expire on June 30th of each year. Any instructor's license expired for more than thirty (30) days will be deemed permanently lapsed and renewal of that license must be by the same process required for a new license with all forms and certifications required.

90-118. Surrender of Truck Driver Training Instructor's License.

Any licensed truck driver training school instructor who ceases to give instruction on the driving of commercial motor vehicles for the truck driver training school for which they are licensed must surrender their instructor's license to the Department within five (5) days. The owner, partner, or chief corporate officer of the truck driver training school is responsible for the return of the instructor's license to the Department upon termination of employment of any instructor, when reasonably possible.

90-119. Truck Driver Training School Enrollment Contract Requirements.

Truck driver training school contracts must contain, as a minimum, the following information:

- (1) The agreed total contract charges and full terms of payments;
- (2) The number, nature, time, and extent of lessons contracted for including the minimum hours of classroom instruction including testing (50 hours minimum), field instruction (50 hours minimum), highway behind-the-wheel training (16 hours minimum), observation, highway, behind-the-wheel, (32 hours minimum); and
- (3) The rate for use of truck driver training school motor vehicle for a commercial drivers license road test if an extra charge is made.

90-120. Contracts.

A. The contract between the student and the truck driver training school must contain a statement which reads substantially as follows: "THIS AGREEMENT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE TRUCK DRIVER TRAINING SCHOOL AND THE STUDENT, AND ANY VERBAL ASSURANCES OR PROMISES NOT CONTAINED HEREIN SHALL BIND NEITHER THE SCHOOL NOR THE STUDENT" and a separate statement which reads as follows: "IF YOU, AS A STUDENT, ARE UNABLE TO SETTLE A DISPUTE WITH THE TRUCK DRIVER TRAINING SCHOOL, PLEASE DIRECT YOUR GRIEVANCES TO THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES.

B. Truck driver training school contracts must not contain the statement "NO REFUND" or its equivalent or any statement guaranteeing or promising a commercial drivers license as a result of the truck drivers training course.

C. The truck driver training school shall file with the Department sample copies of all written contracts, agreements, and catalogs at the time of the original application for the truck driver training school's license and also at anytime thereafter when alterations to contracts are proposed.

D. The truck driver training school must give the prospective student a completed copy of the enrollment contract and catalog at the time the prospective student signs the contract or upon the school's receipt of a completed enrollment contract sent through the mail. The enrollment contract must be written in the same language as the oral sales presentation, if a sales presentation was made by the truck driver training school, must contain the name and address of the truck driver training school. All student records, including contracts, shall be maintained for at least three (3) years at the truck driver training school office.

90-121. Advertising.

A truck driver training school may advertise with the following restrictions:

- (1) No advertisement may indicate in any way that a school can or will issue or guarantee the issuance of a commercial motor vehicle driver license or imply that preferential treatment or advantageous treatment from the Department can be obtained by participating in the training course with the school; and
- (2) No school may state in an advertisement that it has been approved and licensed by the Department.
- (3) No school may advertise free deals. They must follow Federal Trade Commission guidelines.
- (4) No school may guarantee employment in it's advertisement.

90-122. Suspension, Revocation, Refusal to Issue or Renew Truck Driver Training School License.

A. The Department may suspend, revoke or refuse to renew the license of a truck driver training school for the following reasons:

- (1) The conviction of the licensee truck driver training school or any partner of such licensee school for any crime involving dishonesty, deceit, violence, or moral turpitude;
- (2) The licensee truck driver training school makes a material false statement, or signs a false affidavit or conceals a material fact in connection with the operation of a truck driver training school or in connection with the application for a school license or application for an instructor's license;
- (3) The licensee truck driver training school fails to comply or violates any provisions contained in Federal Regulations, Title 56 or within these regulations;

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(4) The licensee truck driver training school, or any partner, engages in fraud or fraudulent practices in relation to securing for anyone, a license to drive a motor vehicle or the licensee truck driver training school is aware of and fails to report to the Department fraud or fraudulent intent by any of the truck driver training school's employees to secure to anyone, a license to drive a motor vehicle. The term "fraudulent practice" as used herein shall include, but not be limited to, any conduct or representation on the part of the licensee truck driver training school or any partner, officer, or agent of the licensee school that gives the impression that a license to operate a motor vehicle may be obtained by any means other than those prescribed by the Department in Chapters 1 and 5 of Title 56 of the South Carolina Code;

(5) The licensee truck driver training school owner, partner or officer, or any truck driver training instructor is addicted to the use of alcohol or narcotics or becomes incompetent to drive pursuant to Title 56 or the South Carolina Code;

(6) Employees or instructors of the truck driver training school solicit business on or within 1500 feet of any property occupied by the Department's licensing offices or any Departmental property;

(7) For violation of the South Carolina Unfair Trade Practices Act of Title 39 of the South Carolina Code; and

(8) No qualified truck driver training instructor is employed by the school.

B. All suspended or revoked licenses shall be returned to the Department immediately upon final order of the Department. Upon notice of suspension or revocation of a truck driver training school's license, the Department will offer a hearing of the contested case according to the provisions of the Administrative Procedures Act.

90-123. Suspension, Revocation, Refusal to Issue or Renew a Truck Driver Training School Instructor's License.

A. The Department may suspend, revoke, or refuse to issue or renew a truck driver training school instructor's license if:

(1) An instructor is convicted of any crime involving dishonesty, deceit, physical violence or moral turpitude;

(2) An instructor makes a material false statement in connection with the operation of a truck driver training school or in connection with the application or renewal of an instructor's license;

(3) An instructor fails to comply with or violates any of the provisions of the Federal Regulations, Title 56 of the South Carolina Code or any provisions of these regulations;

(4) An instructor engages in fraud or fraudulent practices in securing a license to drive a motor vehicle for anyone. The term "fraudulent practices" as used herein must include, but not be limited to any conduct or representation on the part of the instructor that gives the impression that a license to operate a motor vehicle may be obtained by any means other than those prescribed by the Department contained in Chapters 1 and 6 of Title 56 of the South Carolina Code;

(5) An instructor is addicted to the use of alcohol or narcotics or becomes incompetent to operate a motor vehicle pursuant to Title 56 of the South Carolina Code; and

(6) An instructor solicits business on or within 1500 feet of any property occupied by licensing or other offices of the Department.

B. All suspended or revoked licenses shall be returned to the Department immediately upon final order of the Department. Upon notice of suspension or revocation of a truck driver training school's license, the Department will offer a hearing of the contested case according to the provisions of the Administrative Procedures Act.

Fiscal Impact:

The Department of Motor Vehicles estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be minimal.

Statement of Rationale:

The basis of the proposed regulation is to transfer authority from the Department of Public Safety to the Department of Motor Vehicles. The Department of Motor Vehicles shall promulgate regulations contained in this chapter.

All changes to the existing regulation text have been proposed based on the passage of Act No. 0328 of 2006.

Document No. 3086
DEPARTMENT OF NATURAL RESOURCES
 CHAPTER 123

Statutory Authority: 1976 Code Sections 50-1-200, 50-1-220, 50-11-10, 50-11-105, 50-11-310, 50-11-335, 50-11-350, 50-11-390, 50-11-520, 50-11-530, 50-11-854, 50-11-2200 and 50-11-2210.

Synopsis:

These regulations amend Chapter 123-40 and 123-51 in order to set seasons, bag limits and methods of hunting and taking of wildlife on existing and additional Wildlife Management Areas.

Instructions:

Amend Regulations 123-40 and 123-51 to establish changes and include additional WMA's. Delete regulations 123-180 and 123-181. The subject of regulations 123-180 and 123-181 is now covered under Title 50 Statutes.

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-40. Wildlife Management Area Regulations.

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

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

(B) Game Zone 2

John C. Calhoun, Cokesbury, Clarks Hill, Parsons Mountain, Key Bridge, Forks, Ninety-six, Goldmine, Murray, Enoree, Fairforest, Keowee, Fant's Grove and Carlisle WMA's.

Fants Grove WMA

Quality Deer Management Area - bucks must have at least 4 points on one side or a minimum 12-inch antler spread. A point must be at least one inch long. During the Fant's Grove draw hunts for deer, all hunters must sign in at the Fant's Grove DNR checkpoint. Fant's Grove DNR check point will open 2 hours before official sunrise for deer hunts. During draw hunts all hunters are required to wear a hat, coat or vest of international orange while hunting deer.

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(T) Woodbury WMA

Quality Deer Management Area – Antlered deer must have at least 4 points on 1 side or a minimum 12-inch antler spread. A point must be at least 1 inch long measured from the nearest edge of main beam to the top of the point. No more than 3 bucks total may be taken during all seasons combined regardless of method. No buckshot. Hogs may be taken only during deer hunts or scheduled hog hunts. No horseback riding allowed. No ATVs allowed.

Deer Hunts

Deer hunting or shooting will not be allowed from or on roads open to vehicle traffic.

Archery Only (No dogs)	Sept. 15 – 1 st Sat. in Oct.	1 deer per day, either-sex Hogs no limit.
Archery and Muzzleloader (No dogs)	Mon. following 1 st Sat. in Oct. – 3 rd Sat. in Oct.	1 deer per day, either-sex Hogs no limit.
Still Gun Hunts (No dogs)	Mon. following 3 rd Sat. in Oct.- Jan. 1.	1 deer per day, bucks only except on scheduled county-wide either-sex days. Hogs no limit.
Special Hog Still Hunt (No dogs)	Mar. 1 – 3 rd Sat. in Mar.	Hogs no limit.
Special Hog Hunt	1 st Mon. in Feb. – 2 nd Sat. In Feb.	Hogs only, no limit. Limit of 4 bay or catch dogs per party, all hogs taken must be killed where taken. Handguns only.
Raccoons	Wed. - Sat. nights beginning Sat. after Thanksgiving – last Wed. or Sat. in Feb.	3 per party per night
Gray Squirrels and Quail (No open season for fox squirrels)	Mon. following 2 nd Sat. in Dec. - Mar. 1	Game Zone bag limits.
Rabbits	Jan. 1 through March 1	Game Zone bag limits
Fox	Mon. and Tues. nights beginning Jan. 1 through March 1	Game Zone bag limits

(W) Marsh WMA

Deer

Still hunting only, no deer dogs, no buckshot, no hunting from vehicles or from or on roads open to vehicular traffic. No bay or catch dogs allowed for hog hunting. Wild hogs may only be taken during deer hunts and designated hog hunts. Buckshot and rimfire firearms not permitted. No horseback riding. No ATVs allowed.

Raccoon	Wed. - Sat. nights beginning Sat. after Thanksgiving – last Wed. or Sat. in Feb.	3 per party per night.
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(X) Hamilton Ridge WMA

Quality Deer Management Area – Antlered deer must have at least 4 points on 1 side or a minimum 12-inch antler spread. A point must be at least 1 inch long measured from the nearest edge of main beam to the top of the point. No more than 3 bucks total may be taken during all seasons combined regardless of method. All hunters must sign-in and sign-out. Firearms must be unloaded and cased when not hunting. No hunting or shooting from, on, or across any roads open to vehicular traffic. Scouting and stand placement allowed 1 day prior to hunts. No buckshot. Hogs may be taken only during deer hunts or scheduled hog hunts. All hogs taken must be killed where taken. Horseback riding by permit only. No ATVs allowed.

Deer

Still Gun Hunts (No dogs)	No open season except hunters selected by computer drawing.	3 deer, either-sex but only 1 buck.
Archery Only (No dogs) 2 nd Thur. – Sat. in Dec.	4 th Mon. – Sat. in Oct. 2 nd Mon. – Sat. in Nov.	2 deer per hunt period, either-sex, only 1 buck. Hogs no limit.
Muzzleloader (No dogs)	1 st full week in Nov.	2 deer per hunt period, either-sex, only 1 buck. Hogs no limit.
Small Game No open season on fox squirrels or quail.	No hunting before Dec. 26 or after Mar. 1; otherwise Game Zone seasons apply. No hog hunting during small game hunts.	Game Zone bag limits.
Hog Still and Stalk Hunts Archery and Firearms (No dogs, no buckshot)	1 st 4 Fridays in May	No limit.
Hog Hunts with dogs (handguns only) Four dog limit per party.	1 st Thur. – Sat. in Mar. 4 th Thur. – Sat. in Mar.	No limit.

Hog hunters are required to wear hat, coat or vest of solid international orange color while hunting. Hunters must sign register upon entering and leaving Hamilton Ridge WMA.

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(VV) Bonneau Ferry WMA

Horse riding is prohibited. No camping is allowed. No person hunting on Bonneau Ferry WMA may possess, consume, or be under the influence of intoxicants including beer, wine, liquor or illicit or illegal drugs. All terrain vehicles are prohibited. Hunting access by boat is prohibited. Adult/youth fishing only. For fishing youth must be accompanied by no more than two adults 18 years old or older. For hunting, Adult/youth Side A is open only to youth 8-17 years old who must be accompanied by only one adult 21 years of age or older. Youth hunters must carry a firearm and hunt. Adults with youth hunters may also carry a firearm and hunt. For deer and small game hunting Sides A and B will alternate each year. All hunters must sign in and sign out upon entering or leaving Bonneau Ferry WMA. Bonneau Ferry WMA is closed to public access one hour after sunset until one hour before sunrise except, for special hunts regulated by DNR. All impoundments and adjacent posted buffers are closed to all public access Nov. 1 – Mar. 1 except for special draw deer hunts and waterfowl hunts regulated by DNR during the regular waterfowl season.

Deer

Side A (Adult/Youth Only)

Still Gun Hunts	Sept. 15 – Jan. 1, Wed., Fri., Sat., except week of Thanksgiving and 5 days before Christmas until Jan. 1.	Total 8 deer, 2 deer per day, either-sex except only 2 antlered bucks per season. Hogs no limit.
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Side B

Total 8 deer, 2 deer per day,
Except only 2 antlered bucks per
Season. Hogs no limit.

Archery

1 st Mon. – Sat. in Sept.	Buck only.
1 st Mon. – Sat. after Sept. 15	Either-sex.
2 nd Mon. in Nov. until Nov. 30.	Either-sex.

Draw deer hunts are for two and one half days (afternoon on the first day and 2 full days). Hunt periods begin in September and continue until early December. Hunters are required to have permit in possession and must sign in and sign out (Name, permit # and deer killed each day). Area is closed to the general public access during scheduled deer hunts.

Bonneau Ferry Fishing Regulations

Open to fishing on Wed., Sat. and Sun. from March 2 to October 31 during daylight hours only. Adult/youth fishing only. Each youth (17 years and under) must be accompanied by no more than two adults 18 years of age or older. The youth must be actively fishing. Fishing is not allowed during scheduled deer and turkey hunts. Only electric motors may be used. Possession of beer, wine, liquor or drugs is prohibited. Creel limits per person per day are: largemouth bass – 2, panfish (bluegill, redear, crappie, pumpkinseed, redbreast) – 10, species not listed – no limit. Grass carp must be released alive immediately.

2.8 On State-owned, US Forest Service and other Federally-owned WMA lands any hunter younger than sixteen (16) years of age must be accompanied by an adult (21 years or older) who is validly licensed and holds applicable permits, licenses or stamps for the use of WMA lands. Sight and voice contact must be maintained.

This also applies to non-state or non-federally owned leased WMA land in Game Zones 1,2 and 4 for deer hunting.

2.9 Notwithstanding any other provision of these regulations, the Department may permit special seasons on any day during the regular hunting season.

3.6 On State-owned, US Forest Service and other Federally-owned WMA lands during still gun hunts for deer or hogs there shall be no hunting or shooting from, on or across any road open to vehicle traffic. During any deer or hog hunt there shall be no open season for hunting on any designated recreational trail on U.S Forest Service or S.C. Public Service Authority property.

4.1 On State-owned, US Forest Service and other Federally-owned WMA lands with designated check stations, all deer bagged must be checked at a check station. Deer bagged too late for reporting one day must be reported the following day. Unless otherwise specified by the department, only bucks (male deer) may be taken on all WMA lands. Male deer must have antlers visible two (2) inches above the hairline to be legally bagged on "bucks only" hunts. Male deer with visible antlers of less than two (2) inches above the hairline must be taken only on either-sex days or pursuant to permits issued by the department. A point is any projection at least one inch long and longer than wide at some location at least one inch from the tip of the projection. Antler spread is the greatest outside measurement (main beam or points) on a plane perpendicular to the skull. On WMA lands, man drives for deer are permitted between 10:00 a.m. and 2:00 p.m. only, except that no man drives may be conducted on days designated by the department for taking deer of either sex. On WMA lands, drivers participating in man drives are prohibited from carrying or using weapons. On WMA lands, in Game Zones 1, 2 and 4, man drives will be permitted on the last four (4) scheduled either-sex days. A man drive is defined as an organized hunting technique involving two (2) or more individuals whereby an attempt is made to drive game animals from cover or habitat for the purpose of shooting, killing, or moving such animals toward other hunters.

6.2 On Department-owned WMA lands, motor driven land conveyances must be operated only on designated roads or trails. Unless otherwise specified, roads or trails which are closed by barricades and/or signs, either permanently or temporarily, are off limits to motor-driven land conveyances.

7.1 On State-owned, US Forest Service and other Federally-owned WMA lands during any gun and muzzleloader hunting seasons for deer, bear and hogs, all hunters must wear either a hat, coat, or vest of solid visible international orange, except hunters for dove, turkey and duck are exempt from this requirement while hunting for those species.

10.3 On areas where blinds are not provided, only temporary blinds of native vegetation may be constructed and once vacated become available for others or portable blinds which are removed at the conclusion of the hunt may be used.

10.8 During the period 01 Nov.-01 Mar. except for special hunts designated by the Department, Sandy Beach Waterfowl Area is closed to hunting access and impoundments on Bonneau Ferry WMA are closed to public access.

10.11 Potato Creek Hatchery Waterfowl Area is closed to hunting access one week prior to opening of waterfowl season through January 31, except for scheduled waterfowl hunts. No fishing one week prior to opening of waterfowl season through January 31. All hunters must enter and leave the Potato Creek Hatchery Waterfowl Area through the designated public landing on secondary road 260 and complete a data card and deposit card in receptacle prior to leaving the area. Hunting hour are from 30 minutes before legal sunrise to legal sunset (including the special youth hunt). Hunters may not enter the area prior to 3:00 a.m. on hunt days. No airboats are allowed for hunting or fishing and no hunting from secondary road 260.

10.16 Category II Designated Waterfowl Areas include Biedler Impoundment, Lake Cunningham, Russell Creek, Monticello Reservoir, Parr Reservoir, Duncan Creek, Dunaway, Dungannon, Enoree River, Moultrie, Hatchery, Hickory Top, Hickory Top Greentree Reservoir, Lancaster Reservoir, Turtle Island, Little Pee Dee River Complex (including Ervin Dargan, Horace Tilghman), Great Pee Dee River, Potato Creek Hatchery,

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Samson Island Unit (Bear Island), Tyger River, Marsh, Wee Tee and Woodbury Waterfowl Management Areas. Hunting on Category II Designated Waterfowl Areas is in accordance with scheduled dates and times.

DESIGNATED WATERFOWL AREAS

Area	Open dates inclusive	Bag Limits
Hickory Top Greentree Reservoir	Sat. AM only during regular season. No open season on roads and dikes.	Federal Limits
Woodbury	Wed. and Sat. AM only during Federal waterfowl season.	Federal Limits

10.19 Hickory Top Greentree Reservoir is closed to hunting access November 1 until March 1, except for special hunts designated by SCDNR. All hunters must accurately complete a data card and deposit card in receptacle prior to leaving the area. Hunting hours are from 30 minutes before legal sunrise until 11:00 am. Hunters may not enter the area prior to 5:00 am on hunt days. No open season on roads and dikes. Hunters may only use electric motors on boats.

10.20 On all State-owned, US Forest Service and other Federally-owned Category I and II Waterfowl Management Areas, each hunter is limited to 25 non-toxic shells (steel, bismuth/tin, bismuth, tungsten-polymer, tungsten-iron or other Federally approved shot) per hunt for hunting waterfowl or snipe and no buckshot allowed.

123-51. Turkey Hunting Rules and Seasons

AREA	DATES	LIMIT	Other Restrictions
Woodbury WMA	April 1 – May 1	2	Wed. – Sat. Only
Hamilton Ridge WMA	April 1 – May 1	2	Wed. – Sat. Only

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.

e. It is unlawful to hunt turkeys on Sundays on Wildlife Management Area lands.

123-180 Delete

123-181 Delete

Fiscal Impact Statement:

This amendment of Regulations 123-40 and 123-51 will result in increased public hunting opportunities which should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government. The deletion of Regulations 123-180 and 123-181 will have no impact since the activities related to the taking of furbearing animals and the issuance of special permits for taking, capturing or transportation of furbearing animals is now covered by Title 50 statutes.

Statement of Rational:

Rationale for the formulation of these regulations is based on over 60 years of experience by SCDNR in establishing public hunting areas. New areas are evaluated on location, size, current wildlife presence, access and recreation use potential. Contractual agreements with the landowners provides guidelines for the use and management of the property. Wildlife Management Area agreements are on file with the Wildlife Management Section of the Department of Natural Resources, Room 267, Dennis Building, 1000 Assembly Street, Columbia.

Document No. 3085
DEPARTMENT OF NATURAL RESOURCES
 CHAPTER 123

Statutory Authority: S.C. Code Sections 50-15-30, 50-15-40, 50-15-50 and 50-15-70

Synopsis:

These proposed regulatory changes amend Chapter 123 Sections 150, 150.2, 151.1 and 151.2.

Instructions:

Amend Regulations 123-150, 123-150.2, 123-151.1 and 123-151.2 to delete and add species and restrictions for non-game and endangered species.

Article 5
 Non-Game and Endangered Species

Reg.

- 123-150 Non-Game and Endangered Species.
 123-150.2 Birds, Fish, Reptiles, Amphibians and Mammals.
 123-151.1 Spotted Turtle Program.

123-150. Non-Game and Endangered Species

1. The following list of species or subspecies of non-game wildlife are faced with extinction in the foreseeable future and are added to the official State List of Endangered Wildlife Species of South Carolina.

I. Birds

1. American Peregrine Falcon (*Falco peregrinus anatum*)
2. Arctic Peregrine Falcon (*Falco peregrinus tundrius*)
3. Bachman's Warbler (*Vermivora bachmanii*)
4. Bewick's Wren (*Thryomanes bewickii*)
5. Eskimo Curlew (*Numenius borealis*)
6. Kirtland's Warbler (*Dendroica kirtlandii*)
7. Red-cockaded Woodpecker (*Picoides borealis*)
8. Swallow-tailed Kite (*Elanoides forficatus*)
9. Wood Stork (*Mycteria americana*)
10. Piping Plover (*Charadrius melodus*)
11. Southern Bald Eagle (*Haliaeetus leucocephalus*)

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II. Fish

1. Shortnose Sturgeon (*Acipenser brevirostrum*)
2. Pinewoods Darter (*Etheostoma mariae*)

III. Mammals

1. Atlantic Right Whale (*Eubalaena glacialis*)
2. Blue Whale (*Balaenoptera musculus*)
3. Bowhead Whale (*Balaena mysticetus*)
4. Eastern Cougar (*Felis concolor cougar*)
5. Finback Whale (*Balaenoptera physalus*)
6. Florida Manatee (*Trichechus manatus*)
7. Humpback Whale (*Megaptera novaengliae*)
8. Indiana Bat (*Myotis sodalis*)
9. Sei Whale (*Balaenoptera borealis*)
10. Sperm Whale (*Physeter catodon*)
11. Rafinesque's Big-eared Bat (*Plecotus rafinesquii*)

IV. Reptiles

1. Atlantic Leatherback Turtle (*Dermochelys c. coriacea*)
2. Atlantic Ridley Turtle (*Lepidochelys kempii*)
3. Gopher Tortoise (*Gopherus polyphemus*)
4. Atlantic Hawksbill Sea Turtle (*Eretmochelys imbricata*)

V. Amphibians

1. Flatwoods Salamander (*Ambystoma cingulatum*)
2. Webster's Salamander (*Plethodon websteri*)
3. Carolina Gopher Frog (*Rana c. capito*)

VI. Molluscs

1. Atlantic Pigtoe Mussel (*Fusconaia masoni*)
2. Brother Spike Mussel (*Elliptio fraterna*)

2. It shall be unlawful for any person to take, possess, transport, export, process, sell, or offer for sale or ship, and for any common carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the list of "Endangered Wildlife Species of South Carolina", except by permit for scientific and conservation purposes issued by the South Carolina Department of Natural Resources.

Permits for conservation purposes shall be issued only for relocation, if warranted, and the incidental take of Red-cockaded Woodpeckers as part of the statewide Habitat Conservation Plan for Safe Harbor and for other mitigation purposes approved by the U.S. Fish and Wildlife Service.

3. The penalty for the violation of this Rule and Regulation shall be that prescribed by 50-15-80, 1976 S.C. Code of laws.

123-150.2 Birds, Fish, Reptiles, Amphibians and Mammals

The following list of species or subspecies of non-game wildlife are considered to be threatened and are added to the official state list of Non-game Species in Need of Management.

I. Birds

1. Bewick's Wren (*Thryomanes bewickii*)
2. Common Ground Dove (*Columbina passerina*)
3. Least Tern (*Sterna albifrons*)
4. Wilson's Plover (*Charadrius wilsonia*)

II. Fish

1. Carolina Pygmy Sunfish (*Elassoma boehlkei*)
2. Broadtail Madtom (*Noturus* sp.)

III. Reptiles

1. American Alligator (*Alligator mississippiensis*)
2. Atlantic Loggerhead Sea Turtle (*Caretta caretta*)
3. Atlantic Green Sea Turtle (*Chelonia mydas*)
4. Coal Skink (*Eumeces anthracinus*)
5. Bog Turtle (*Clemmys muhlenbergii*)
6. Spotted Turtle (*Clemmys guttata*)
7. Southern Hognose Snake (*Heterodon simus*)

IV. Amphibians

1. Dwarf Siren (*Pseudobranchius striatus*)
2. Pine Barrens Treefrog (*Hyla andersonii*)

V. Mammals

1. Small-footed Bat (*Myotis leibii*)

123-151.1 Regulations for Spotted Turtle

A. Spotted Turtle Program

1. It is unlawful for any person to take, possess, transport, import, export, process, sell, offer for sale, ship, or receive for shipment any spotted turtle without a permit from the department.

B. Spotted Turtle Permits

1. The department has the authority to grant or deny spotted turtle permits at no cost. Application must be made to the department for a spotted turtle permit.

2. The permits are valid for five (5) years from the date of issue.

3. The permits must be renewed every five years at the discretion of the department.

4. The department may set permit conditions consistent with the protection of spotted turtles. Permit conditions include but are not limited to:

- a. Sale of adult spotted turtles is prohibited
- b. An individual may take and possess no more than nine wild-caught adult spotted turtles.

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c. An individual may sell captive bred spotted turtles under four inches in carapace length for educational purposes.

C. Permit Reporting Requirements

1. Spotted turtle permit holders will report the following information to the department every five years.

- a. Number of wild-caught adult spotted turtles in possession (not to exceed 9).
- b. Number of captive-bred spotted turtles in possession.
- c. Number of captive-bred spotted turtles produced during calendar year.
- d. Number of captive-bred, juvenile spotted turtles sold in the calendar year.

D. The penalty for violations of this regulation is prescribed in Section 50-15-80a, Code. Each spotted turtle taken or possessed in violation of these regulations shall constitute a separate offense.

123-151.2 Regulations For Southern Hognose Snake

1. It is unlawful for any person to take, possess, transport, import, export, process, sell, offer for sale, ship, or receive for shipment any southern hognose snake without a permit from the department. Permits will be issued only for research and educational purposes.

Fiscal Impact Statement:

This amendment of Regulations 123-150, 150.2, 151.1 and 151.2 will not result in any fiscal impact to the state or the department.

Statement of Rational:

Rationale for the formulation of these regulations is based on over 30 years of experience by SCDNR in managing the state's Non-Game wildlife and its Endangered Species. The department draws upon expertise in these matters from within the agency and from experts outside the agency. Research and survey documents are on file with the Wildlife Section of SCDNR, 1000 Assembly Street, Columbia.