

# CHAPTER 19

## State Budget and Control Board

### ARTICLE 1 OFFICE OF EXECUTIVE DIRECTOR

Statutory Authority: Act 178 of 1981, and 1976 Code §§ 4-29-140, 44-7-1590, and 48-3-140

#### **19-101. TRAVEL REGULATIONS FOR STATE EMPLOYEES; POLICY.**

##### **Editor's Note**

These regulations apply to all employees of the State or agencies thereof not otherwise specifically covered by law.

The following regulations, unless noted otherwise, were amended by State Register Volume 17, Issue No. 5, Part 1, eff May 28, 1993.

##### **19-101.01. Travel and Transportation at State Expense.**

Travel and transportation at State expense will be authorized only when officially justified and by those means which meet State government requirements consistent with good management practices.

##### **19-101.02. Economical Considerations.**

Transportation to and from points of arrival and departure will be accomplished by the most economical methods.

##### **19-101.03. Air Travel.**

Travel by commercial airlines will be accomplished in coach or tourist class, except where exigencies require otherwise.

##### **19-101.04. Definitions.**

A. Permanent place of employment: The location of the place of activity where a State employee is regularly assigned and performs work. The corporate limits of the city or town in which the employee's place of work is located. If an employee is not employed in an incorporated city or town, his permanent place of employment is the place of work.

B. Residence: The fixed or permanent domicile of a person that can reasonably be justified as a bona fide place of actual residence.

C. Mileage allowance: A rate per mile in lieu of actual expenses of operation of a privately owned automobile. If a dependent accompanies an employee on an authorized business trip, only those expenses which may be directly attributed to the employee may be reimbursed.

##### **19-101.05. Automobile Travel.**

Auto travel should be by the most direct route practicable, and substantial deviation from distances shown by the current State Highway system map of the South Carolina Highway Department should be explained.

##### **19-101.06. Mileage Between Employee's Home and Place of Employment.**

Mileage between an employee's home and his/her place of employment is not subject to reimbursement. However, when an employee leaves on a business trip directly from his/her home, and does not

go by the employee's headquarters, the employee shall be eligible for reimbursement for actual mileage beginning at his/her residence.

**19-101.07. Travel and Subsistence Limitations.**

Travel and subsistence limitations may be made more restrictive by the agency head or director as dictated by agency requirements.

**19-101.08. Election to Travel by Automobile Rather Than Aircraft.**

If, for his own convenience, an employee elects to travel by automobile when air travel is more economical he shall be entitled to reimbursement as follows:

- A. Mileage equal to the amount of coach or tourist air fare.
- B. Vicinity mileage incurred on official business in lieu of using a taxi.
- C. Parking fees equal to that which would have been incurred if the car had been parked at the airport.
- D. Subsistence based on date and time airline connections would have been made for departure and return. Any period of time exceeding these guidelines will be at the employee's expense and no subsistence will be paid.

**19-101.09. Parking Fees; Fines for Motor Vehicle Violation.**

Parking fees for state-owned vehicles are reimburseable. No reimbursement shall be made to operators of state-owned vehicles who must pay fines for moving or non-moving violations.

**19-101.10. Mileage for Use of Privately Owned Vehicle.**

The mileage allowance paid to State employees for the use of privately owned vehicles shall be in lieu of all expenses connected with the operation of the vehicle including but not limited to operating costs, depreciation, parking fees, tolls, et cetera. Provided, however, the employee may be reimbursed for storage or parking charges when it is necessary that the vehicle be left at a hotel, airport, or like facility.

**19-101.11. Schedule of Maximum Meal Reimbursement.**

The Budget and Control Board shall annually prepare a schedule of allowable deductions for meals which shall not exceed the total amount allowed in accordance with the General Appropriations Act. The Budget and Control Board may waive the provisions of this schedule for certain activities or functions performed by members of state boards, commissions, or committees who are not state employees. The Budget and Control Board shall furnish to each agency a copy of the schedule as soon as practicable after the passage of the General Appropriations Act.

**19-101.12. Meal Reimbursements.**

No reimbursement shall be made for meals within ten (10) miles of an employee's official headquarters or official place of residence. Agency heads or directors may increase this distance requirement as deemed appropriate.

**19-101.13. Receipts for Expenditures.**

Receipts for all expenditures other than taxi fares and meals shall be provided with the voucher requesting reimbursement. Provided, however, that the Budget and Control Board may waive this requirement if the employee can furnish other acceptable evidence of expenditures subject to reimbursement.

**19-101.14. Attendance at Statewide, Regional or District Meetings.**

Employees required, as a part of their official duties, to attend statewide, regional or district meetings within the area in which the employee is headquartered may receive reimbursement for the cost of meals served at such meetings. Reimbursements for these meetings must have the specific approval of the sponsoring agency director who will notify other agencies involved.

**19-101.16. Overnight Accommodations.**

No reimbursement for overnight accommodations will be made within fifty (50) miles of the employee's official headquarters or place of official residence.

**19-101.17. Foreign Travel.**

Any foreign travel of a State employee will require prior approval of the Budget and Control Board regardless of the source of funds financing such travel. For the purpose of this regulation, foreign travel is defined as any destination outside the continental limits of the United States except Alaska, Hawaii, Canada, Puerto Rico, or the Virgin Islands.

**19-101.18. Handicapped Employees.**

If a handicapped employee, because of his handicap, is unable to use the most economical mode of travel he may avail himself of the most economical mode compatible with his handicap. In determining the next most economical mode of travel, the following must be considered:

- A. Cost of fare or mileage.
- B. Subsistence expenses incurred due to extra days of travel, if any.
- C. Lodging expenses incurred due to extra days of travel, if any.
- D. Other allowable expenditures incurred due to extra days of travel, if any.

The agency director of the employee's agency must certify as to the employee's handicap and as to his inability to use the most economical mode of travel.

No expenses will be authorized for attendants traveling with State employees.

**19-101.19. Advances for Travel Expenses.**

Travel expense advances may be made subject to the following:

- A. No travel advance shall be made to an employee for travel within the State without specific approval of the Budget and Control Board.
- B. No travel advance shall be made for more than 80% of the estimated amount of the total travel expense, excluding airline transportation.
- C. No advance shall be made in instances where 80% of the estimated travel expense does not exceed \$250.
- D. The agency, department or institution making advances shall keep such records of advances made in accordance with rules prescribed by the Comptroller General. If the Comptroller General shall furnish to the Budget and Control Board a statement that any agency has failed to keep proper records of travel advances, the Budget and Control Board may withdraw the privilege of that agency for making travel advances.
- E. The Comptroller General may require that requests for travel advances must be submitted not later than seven (7) business days prior to the beginning of the trip for which the advance is requested.
- F. When the travel assignment is completed, a voucher payable to the traveler shall be prepared for the total amount of allowable expenses incurred and paid. The traveler must then repay the cash advance when the voucher is processed for payment and the check issued to the traveler.

**19-102. APPROVAL PROCEDURE FOR INDUSTRIAL REVENUE BOND, POLLUTION CONTROL BOND AND HOSPITAL REVENUE BOND PROPOSALS.**

**Editor's Note**

The following regulations, unless noted otherwise, were amended effective March 22, 1985.

**19-102.01. Securing Approval of Proposal.**

To secure approval of a proposal to issue industrial revenue bonds (§§ 4-29-10, et seq), pollution control bonds (§§ 48-3-10, et seq), or hospital revenue bonds (§§ 44-7-1410, et seq), the following must be submitted as a package to the Budget and Control Board (the Board):

- A. An executed original and two copies of the petition to the Board which may include a request for the allocation of a portion of the State Ceiling on the issuance of private activity bonds and the

no consideration certificate required by the Internal Revenue Service in connection with such allocations.

B. An executed copy of the resolution or ordinance of the governing body authorizing a petition to the Board.

C. An executed copy of the inducement resolution or comparable preliminary approval of the proposed undertaking, if any.

D. Audited financial statements of the entity obligated to pay the bonds covering at least three prior fiscal years except that, in any case where the bonds are to be sold privately, a representation from the person or institution purchasing the bonds that satisfactory financial information has been provided by that entity and that the bonds are being purchased for investment rather than resale purposes may be submitted in lieu of audited financial statements. Use of the Board's Standard Form Investment Letter for that representation is urged.

E. The required certifications by the Department of Health and Environmental Control must accompany petitions for the issuance of pollution control and hospital revenue bonds.

F. An original and as many copies as bond counsel may need of the resolution proposed for adoption by the Board, which must include the proposed public notice, to be certified by the Board Secretary.

G. A check for the processing fee in accord with the following schedule:

\$1,000,000 or less	\$2,000
Over \$1,000,000 through \$25,000,000	\$3,000
Over \$25,000,000 through \$50,000,000	\$4,000
Over \$50,000,000	\$5,000

If a request is only for an allocation of a portion of the State Ceiling on the issuance of private activity bonds, only the documents described in A and C, above, are required.

### **19-102.02. Notice; Submission of Documents.**

The required documents must be submitted to the Board Secretary together as a package for agenda preparation and review purposes not less than six days prior to the Board meeting at which a particular petition is proposed to be acted upon. Unexecuted documents may be submitted for agenda and review purposes but executed versions must be submitted prior to the meeting or the proposal will be withdrawn from the agenda.

The submission of additional documents, such as the proposed forms of bonds, loan agreements, mortgages and security agreements, providing for the issuance and securing of the bonds is not required except when requested by the State Auditor or his designee. These additional documents may be submitted in unexecuted form.

The financial statements and other documents submitted for review by the State Auditor are considered part of the Auditor's working papers and are filed accordingly.

### **19-102.03. Review by Office of Attorney General; Review of Financial Condition of Entity Proposing Bonds.**

Prior to Budget and Control Board approval of a petition (a) the resolution/ordinance, the petition, the inducement resolution or comparable preliminary approval, if any, the proposed Board resolution and any required certificate shall have been reviewed and found legally adequate by the Office of the Attorney General, and (b) except when the bonds are to be privately placed, the financial condition of the entity obligated to pay the bonds shall have been reviewed and found satisfactory by the State Auditor or his designee.

### **19-102.04. Notice of Approval.**

When Board approval of any petition has been granted, the Board Secretary shall advise the governing body or its agent promptly and shall certify copies of the Board resolution evidencing such approval.

### **19-102.05. Publication of Public Notice of Approval.**

The governing body or its agent shall bear responsibility for the publication of the public notice of the Board's approval of a petition required by law. A certified copy of the published notice must be filed promptly with the Board Secretary.

## **19-103. REGULATIONS ON ALLOCATION OF STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS.**

### **Editor's Note**

This regulation, unless otherwise noted, became effective March 22, 1985.

### **19-103.01. Calculation and Certification of State Ceiling.**

The State Ceiling, as established in the Deficit Reduction Act of 1984 (the Act), shall be calculated by the Secretary of the Budget and Control Board based upon the provisions of the Act and certified to by him as soon as practicable after the estimates of the population of the State of South Carolina are published by the Bureau of the Census and in no event later than February 1 of each calendar year; provided, that he shall calculate and certify the State Ceiling for the calendar year 1984 no later than fifteen (15) days following the issuance of these regulations.

### **19-103.02. Allocation of Bond Limit Amounts.**

(a) The private activity bond limit amounts for all issuing authorities will be allocated by the Budget and Control Board in response to Authorized Requests (as described in Reg. 19-103.04 below) by such issuing authorities.

(b) The aggregate private activity bond limit amount for all South Carolina State government agencies and for all other South Carolina general purpose governmental units is allocated initially to the State for further allocation within the limits prescribed herein.

(c) Except as is provided in Reg. 19-103.05 hereof, all allocations from the Local Pool or from the State Agency and Exempt Facilities Pool (described in Reg. 19-103.03 below) by the Budget and Control Board will be made on a first-come, first-served basis, to be determined by the date and time sequence in which complete Authorized Requests are received by the Board's Secretary.

### **19-103.03. Private Activity Bond Limits.**

(a) The private activity bond limit for all agencies of the State of South Carolina now or hereafter authorized to issue private activity bonds as defined in the Act and for issuing authorities other than State Government agencies for issues of such bonds for "exempt facilities" (which term, as used herein, shall mean facilities described in Section 103(b)(4) of the Internal Revenue Code of 1954, as amended, including, in particular, pollution control facilities) to be known as the "State Agency and Exempt Facilities Pool," shall be forty per cent (40%) of the State Ceiling (1) less any amount reallocated by the Budget and Control Board to the local pool (described in the succeeding paragraph); or (2) plus any amount reallocated by the Board from the local pool.

(b) The private activity bond limit for all issuing authorities within the State of South Carolina other than State Government agencies described in the preceding paragraph now or hereafter authorized to issue private activity bonds as defined in the Act, excluding issues of such bonds for "exempt facilities" by such issuing authorities, to be known as the "Local Pool," shall be sixty per cent (60%) of the State Ceiling (1) plus any amount reallocated by the Budget and Control Board from the State Agency and Exempt Facilities Pool; or (2) less any amount reallocated by the Board to the State Agency and Exempt Facilities Pool.

(c) The Budget and Control Board with review and comment by the Joint Bond Review Committee may at any time it determines that either the basic Local Pool or the basic State Agency and Exempt Facilities Pool is exhausted reallocate any unused amounts from one pool to the other.

### **19-103.04. Authorized Requests for an Allocation.**

(a) For purposes of Reg. 19-103.02, an Authorized Request shall mean, for any bonds issued by issuing authorities other than State Agencies, a request contained in a petition to the Budget and Control Board that a portion of the State Ceiling be allocated to the bonds for which the petition has

been filed, accompanied by a copy of the Inducement Contract, Inducement Resolution, or comparable preliminary approval on such bonds entered into by such issuing authority. A copy of such Authorized Request shall be forwarded promptly by the Budget and Control Board to the Joint Bond Review Committee for information.

(b) For private activity bonds proposed for issuance by any State Agency, an Authorized Request shall mean a petition filed with the Budget and Control Board not sooner than the adoption of a bond ordinance or bond resolution authorizing the issuance of such bonds. A copy of such Authorized Request shall be forwarded promptly by the Budget and Control Board to the Joint Bond Review Committee for information.

(c) Each Authorized Request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

#### **19-103.05. Limitation on Board Allocations in Response to Authorized Requests.**

The Budget and Control Board with review and comment by the Joint Bond Review Committee may disapprove, reduce or defer any Authorized Request. In the event it becomes necessary to exercise this authority due to lack of funds in either Pool, the Board and the Committee shall take into account the public interest in promoting economic growth and job creation.

#### **19-103.06. Filing of Certificate.**

(a) Prior to the issuance of any private activity Bond for which a portion of the State Ceiling has been allocated by the Budget and Control Board pursuant to Regs. 19-103.01 through 19-103.05 hereof, the chairman or other official of the issuing authority shall certify to the Secretary of the Budget and Control Board the exact amount of Bonds being issued. A copy of the Internal Revenue Service Form 8038 on the Bond issue being certified filed or to be filed with the Internal Revenue Service may be used to meet this certification requirement.

(b) In response, the Secretary of the Budget and Control Board shall determine that such Bonds when issued and combined with the total amount of such Bonds certified to the Board Secretary by issuing authorities as having been issued or to be issued previously in the calendar year will not exceed the State Ceiling and, if so, the Secretary shall certify in writing to that effect to such officer. Except under extraordinary circumstances, the Secretary will make such determination and execute such certificate within two (2) business days following the date he received the bond issue amount certificate of the issuing authority.

(c) The failure by any issuing authority to file the bond issue amount certificate shall cancel the allocation.

#### **19-103.07. Lapse of Filing.**

Whenever any filing as provided in Reg. 19-103.06 hereof precedes the date of issue of the Bonds by more than ten (10) business days, such filing shall be void and a new filing shall be required prior to the issuance of the bonds.

#### **19-103.08. Time Limits of Allocations.**

(a) Any allocation of the State Ceiling approved by the Budget and Control Board before October 1 shall be valid only for the calendar year in which it was approved, unless specified to the contrary in the Board Secretary's allocation certification required by Reg. 19-103.06 hereof.

(b) Board approval of allocations on and after October 1 must specify the calendar year in which the allocation is valid and this information must be indicated in the certificate of the Board's Secretary.

(c) Unless specified to the contrary, each allocation shall expire automatically if the bonds for which such allocation has been approved are not issued within ninety (90) days following the approval by the Budget and Control Board; provided that the entity which filed the Authorized Request must advise the Board's Secretary of the status of the issuance within sixty (60) days and again within seventy-five (75) days from the Board's approval if the Internal Revenue Service Form 8038 has not been filed before those points in time.

**19-103.09. Termination of This Regulation.**

These Regulations shall be of no force and effect upon the earlier of the rescission by Congress or declaration of unconstitutionality of Section 621 of the Act, or any portion thereof, by the U.S. Supreme Court.

**19-103.10. Future Changes and Evaluation of Regulations.**

(a) Prior to January 1, 1986, the Joint Bond Review Committee will conduct a review and evaluation of these Regulations.

**19-104. APPROVAL PROCEDURE FOR CITY, COUNTY AND REGIONAL HOUSING  
AUTHORITY BOND ISSUES FOR MULTIFAMILY HOUSING PROJECTS.**

**Editor's Note**

The following regulations, unless noted otherwise, became effective May 22, 1987.

**19-104.01. Securing Approval; Documents Required.**

To secure approval of the issue and sale of bonds or notes (hereafter bonds) by a city, county or regional housing authority (hereafter local housing authority) to finance multifamily housing projects, as provided in Act 369 of 1986, the following must be submitted to the Budget and Control Board (Board):

A. An executed original and a copy of the petition of the local housing authority governing body describing a proposed project, requesting Board approval of the issue and sale of a specified amount of bonds to finance the project and, including, if appropriate, a request for an allocation of a portion of the State Ceiling to the bonds and the project;

B. Two executed copies of the resolution or ordinance of the local housing authority governing body authorizing the petition to the Board;

C. Two sets of the documents providing for the issuance and securing of the bonds or drafts thereof in substantially final form;

D. Two sets of audited financial statements of the entity obligated to pay the bonds covering at least the three prior fiscal years except that, in any case where the bonds are to be sold privately, a representation from the person or institution purchasing the bonds that satisfactory financial information has been provided by that entity and that the bonds are being purchased for investment rather than resale purposes may be submitted in lieu of audited financial statements;

E. The original of a resolution approving the bond issue proposed by the local housing authority governing body for adoption by the Board and copies of that resolution to be certified by the Board Secretary;

F. Two copies of statements disclosing:

(1) the results of any market study or other analysis of the multifamily housing needs in the proposed project area which was the basis upon which a determination was made by the local housing authority to issue the bonds to finance the project together with a complete description of the project;

(2) the principal amount of the bonds proposed to be issued;

(3) the purpose or purposes for which the proceeds of such bonds are to be expended;

(4) the maturity schedule of the bonds proposed to be issued;

(5) the rate of interest expected on the bonds proposed to be issued;

(6) a schedule showing (a) the annual debt service requirements of all outstanding bonds of the local housing authority proposing the bonds; (b) the annual debt service requirements of the proposed bonds; and (c) the aggregate annual debt service requirements of the outstanding and proposed bonds;

(7) a schedule showing the amount and source of revenues available annually for the payment of the annual debt service requirements established by the schedule required by (6), above;

(8) the method to be employed in selling the proposed bonds;

(9) evidence of compliance with applicable provisions of State and federal law prior to the issuance of the bonds;

(10) evidence that the project or projects financed by the bonds will be managed and operated in compliance with applicable provisions of State and federal law including, in those instances determined by the Board, subjecting the project to restrictive covenants to ensure such compliance;

(11) evidence that each bond financing proposed is structured to protect the interests of prospective bondholders and the local housing authority by meeting the following requirements, as a minimum:

(a) With respect to bonds to be offered at public sale:

(1) the issue must be rated no less than "investment grade" by one of the national rating agencies; and

(2) in addition, one or more of the following conditions must be met:

(aa) There must be in effect for the bonds to be issued a federal program which provides assistance in the payment of the principal and interest when due to bondholders.

(bb) The lendable proceeds of the bond sale must be used to acquire either federally-insured mortgages or mortgages insured by a private mortgage insurance company authorized to do business in South Carolina.

(cc) The payment of principal and interest when due to bond purchasers and bondholders must be insured by the maintenance of adequate reserves or by insurance or by a guaranty by a responsible entity.

(b) With respect to bonds sold or placed as "Mortgage bonds sold as a unit" or in "Transactions with banks, institutional buyers, etc. . . .", as provided in Code § 35-1-320, the documents pursuant to which bonds are issued must permit the local housing authority to avoid any default by it by completing an assignment of or foregoing its rights with respect to any collateral or security pledged to secure the bonds.

(c) With respect to any bonds offered for sale upon the representation that the interest paid thereon by the issuer is exempt from federal income taxation, the documents pursuant to which bonds are issued must require the mandatory redemption of the bonds at par value if the interest paid thereon is determined to be subject to federal income taxation.

(12) evidence that every official statement, preliminary official statement, and any other document used in the sale of any bond issued by a local housing authority includes the following disclaimer:

No representation is made by or on behalf of the State of South Carolina or the State Budget and Control Board as to the creditworthiness of the securities hereby offered. Neither the State of South Carolina nor any of its agencies is obligated for the payment of any principal or interest due or to become due on the securities hereby offered for sale.

(13) the local housing authority's agreement that the management agent for any project approved by the Budget and Control Board must also be approved by the Board.

**19-104.02. Review by Office of the Attorney General, by Office of State Auditor and by Office of Executive Director.**

Before the Board will grant final approval in whole or in part to a petition by the governing body of a local housing authority to issue bonds,

A. the petition, the resolution or ordinance, the documents providing for the issuance and securing of the bonds, and the proposed Board resolution must have been reviewed and found legally adequate by the Office of the Attorney General;

B. the financial statements of the entity obligated to pay the bonds (which are considered part of the Auditor's working papers) must have been reviewed and the financial condition of the entity must have been found to be such that the Office of State Auditor found no reason for the Board to disapprove the petition and the Board must have determined, upon the advice of the Office of State Auditor, that the funds estimated to be available for the repayment of the local housing authority's



bonds, including the proposed bonds, will be sufficient to provide for the payment of the principal and interest on the local housing authority's bonds to be outstanding as they become due; and

C. the statements required to be submitted to the Board as described in 19-104.01. F., above; the documents providing for the issuance and securing of the bonds; and the results of the reviews required in 19-104.02. A. and 19-104.02. B., above, must have been reviewed by staff of the Board's Office of Executive Director and, on the basis of this review, staff of the Board's Office of Executive Director must have recommended to the Board that it (1) approve the petition; (2) approve the petition with conditions; or (3) disapprove the petition.

**19-104.03. Notice; Submission of Documents; Consideration by Board.**

The governing body of the local housing authority or its agent must notify the Board Secretary not less than six (6) days prior to the Board meeting it proposes that a particular petition be acted upon and that governing body must submit to the Board Secretary at that time all of the documents required. If the reviews required in 19-104.02, above, are not completed prior to the Board meeting at which a petition is scheduled to be considered, the Board at that meeting may grant approval on the condition that the required reviews are completed with results which recommend approval of the petition, as determined by the Board Secretary, within not more than thirty (30) days of the date of the Board meeting at which the petition was scheduled for consideration, except in extraordinary cases. If any of the required reviews result in a recommendation that the petition be approved by the Board with conditions or that it be disapproved, the Board Secretary must include that petition on the agenda of the next regular meeting of the Board for its consideration and final decision.

**19-104.04. Review and Report by Local Authorities.**

After Board approval of a local housing authority petition, the local housing authority involved must periodically review and report to the Board on the operation of projects approved by the Board to ensure their compliance with State and federal law. As a means of guiding its project monitoring activities, the Board will issue a manual which is consistent with these regulations which outlines the procedures to be followed by local housing authorities in reporting on the operation of projects approved by the Board for distribution to local housing authorities and other interested parties. The manual must be approved by the Board for distribution not more than ninety (90) days after the approval of these regulations by the General Assembly. As a part of its on-going involvement with local housing authorities, the Board annually must provide to any local housing authority which has issued bonds approved by the Board a schedule showing maximum allowable income adjusted for family size which must be used to determine eligibility of prospective tenants for the purpose of ensuring compliance with federal and State law.

**ARTICLE 2  
INFORMATION RESOURCE MANAGEMENT**

(Statutory Authority: 1976 Code § 23-47-30)

**SUBARTICLE 1  
STANDARDS FOR IMPLEMENTATION, OPERATION, AND FUNDING OF  
9-1-1 LOCAL EMERGENCY TELEPHONE SERVICES SYSTEMS**

**19-200. Definitions.**

Terms that have been defined in the Act shall have the same definitions when utilized in these regulations. Additional definitions are as follows:

- A. "Government entity" means a political subdivision of the State having responsibility for public safety, specifically, a county, municipality, or similar governmental unit.
- B. "Telephone service supplier" means "service supplier" as defined in the Act.
- C. "Planned coverage area" or "PCA" means the well-defined geographical area from which the planned 9-1-1 system will directly accept and process 9-1-1 calls.

**HISTORY: Added by State Register Volume 16, Issue No. 7, eff July 24, 1992.**

### **19–201. Application to be Made.**

Government entities seeking approval to implement 9-1-1 systems must make application to the Division Director, Division of Information Resource Management (DIRM), Suite 930–AT&T Building, 1201 Main Street, Columbia, South Carolina, 29201.

**HISTORY:** Added by State Register Volume 16, Issue No. 7, eff July 24, 1992.

### **19–202. Preliminary Review and Approval.**

The Act requires a government entity that seeks funding for a 9-1-1 system to submit to DIRM a system plan for review and approval. It is recognized that much of the information needed to properly document the proposed 9-1-1 system may not be available in the beginning stages of the planning process, at which time, up to 30 months prior to system implementation, certain levels of funding may be required, as provided for in the Act. For this reason DIRM may grant preliminary approval based on information and estimates available at the beginning of the planning cycle. Such preliminary approval shall allow funding mechanisms to be activated so not to unduly hamper system development. The remaining items of information detailed below will be required as they become available, and a complete and final plan must be submitted and approved prior to 9-1-1 system implementation. The following items of information will suffice to allow an initial review of a 9-1-1 system plan. Corresponding actual, final, and complete information must replace all estimated, partial, and incomplete information prior to 9-1-1 system implementation.

A. A document outlining and describing proposed agreements, understandings, duties and obligations, and activities associated with the intended contractual relationship between the government entity making application and telephone service supplier(s) whose equipment, facilities, and services will be required for system implementation and operation. This document must contain information specified in items 203 H(1) through 203 H(6) below; and

B. A determination, with justification, of the type of 9-1-1 system planned, as Enhanced 9-1-1 (E911) or Basic 9-1-1, as specified in subsection 203 A below, and a statement of responsibility, as specified in subsection 203 B below; and

C. A listing of all public safety agents and other service providers, as specified in subsection 203 D below; and

D. A preliminary system description based on estimates of information specified in items 203 I(1) through 203 I(4) below; and

E. A description of the existing public telephone system within the PCA, as specified in item 203 I(5) below; and

F. A mapping and addressing plan covering the entire PCA, as specified in subsection 203 J below; and

G. A plan for public instruction in 9-1-1 capabilities and usage, as specified in subsection 203 L below; and

H. A preliminary budget plan containing estimates of cost and revenue figures specified in subsection 203 O below.

**HISTORY:** Added by State Register Volume 16, Issue No. 7, eff July 24, 1992.

### **19–203. Information Requirements for Final Application.**

Final applications must address, affirm compliance with, and furnish information in accordance with each section and subsection below, explicitly, completely, and in the order given, to allow for a speedy and accurate review. It is recognized that much of the information requested below will be included in other primary documents. It is not necessary to transcribe such material into the prescribed order or format, but, instead, a cross-reference guide must be provided, arranged in the required order, to provide exact reference for quick and straightforward access to the needed information. Copies of all referenced primary documents must be furnished with the application, and all referenced locations must contain sufficiently complete and explicit information.

A. Government entities planning to make available 9-1-1 services are encouraged to implement Enhanced 9-1-1 (E911) systems. However, where an E911 system is determined to be prohibitively costly or otherwise not feasible, and Basic 9-1-1 service can be shown to be reasonably adequate to

the public's needs and safety, a Basic 9-1-1 system may be proposed. A Basic 9-1-1 system may be proposed as a temporary measure during development and pending implementation of full E911 capabilities. Applications must clearly identify the type of system proposed and contain sufficient explanatory information to justify such determination. In the event a Basic 9-1-1 system is proposed as a temporary measure, the application must indicate a proposed schedule or timetable for ultimate Enhanced 9-1-1 implementation.

B. Applications must include a statement of responsibility by which the government entity making application is identified and assumes responsibility for all matters and consequences relating to the implementation and operation of the planned 9-1-1 system, subject to limitations of legal liability specified in the Act. Applications must include name, title, address, and telephone number of the 9-1-1 project coordinator. In the case of planned regional systems, involving two or more distinct, coordinate government entities, a single statement of responsibility must delineate and make explicit respective administrative, operational, and fiscal functions and responsibilities by which the participating government entities will jointly undertake the planned 9-1-1 system as a whole.

C. Services made available through 9-1-1 must include all law enforcement, fire protection, emergency rescue, and EMS services in the PCA. Other emergency services may be included for potential 9-1-1 access; such services must be identified and described in the application. A 9-1-1 system must include in its PCA all of the territory of the government entity making application. A regional system must include in its PCA all of the territories of each of the separate government entities jointly making application. Applications must identify all 9-1-1 systems, basic and enhanced, operational and under development, that have coverage areas in common with the PCA.

D. Applications must include a listing of all public safety agents and other service providers accessible through the planned 9-1-1 system. Location, address, name of contact person, and telephone number(s) must be provided for each listed agent and service.

E. Applications must contain letters of understanding between the government entity making application and each public safety agent and other emergency service provider not falling under the direct administrative or operational control of the entity making application, defining a standard mutual operational relationship, and a joint acceptance and specific assignment of duties and responsibilities associated with 9-1-1 system operation. Where multiple public safety agents and/or other planned 9-1-1 accessible services have concurrent or overlapping jurisdictions within the PCA, a clear understanding of which specific calls for assistance will be referred to individual public safety agents and other services must be evidenced.

F. Applications must include written guidelines and procedures, based on internal policies and procedures of the government entity making application, or based on the above understandings with other public safety agents and emergency service providers, that will govern appropriate assignment of calls for assistance by/from each proposed 9-1-1 Public Safety Answering Point (PSAP) to the various public safety agents and other emergency services able to respond to such calls. Certain such agents and services may be physically located outside the PCA: each such instance must be noted, and corresponding 9-1-1 call assignment patterns must be shown to coordinate with assignment patterns in adjacent jurisdictions in a manner not unduly affecting emergency responsiveness in those jurisdictions.

G. The proposed 9-1-1 system, to include all planned services and coverage/response areas and patterns, must be coordinated with services and coverage/response areas and patterns associated with all adjacent 9-1-1 systems and their respective PCA's, and all other adjacent public safety jurisdictions and activities. Application must identify and verify all points of such required coordination.

H. Applications must contain letters of understanding between the government entity making application and the telephone service supplier, or local exchange carrier, whose equipment, facilities, and/or services will be employed to support planned 9-1-1 service and/or from whose subscriber billing supporting revenues will be derived. Such agreement(s) must affirm details of compliance with the Act. Such agreement(s) must assign and make clear all respective roles, duties, and functions pertaining to proper 9-1-1 system planning, development, implementation, and operation. Such agreement(s) must specifically:

- (1) Present a master schedule, or "system time line", detailing the schedule and sequencing of all major and/or critical events associated with 9-1-1 system planning, development, implementation, and operation; and

(2) Detail and schedule the particulars of street address data base creation, data element and data format standardization, data coordination, and periodic data base reconciliation and rectification, to ensure proper ANI-ALI correspondence and optimal 9-1-1 system responsiveness and efficiency; and

(3) Cite and present the text of the ordinance to be adopted, imposing a monthly 9-1-1 charge upon each local exchange access facility subscriber, and indicate the amount of the uniform monthly 9-1-1 charge imposed or to be imposed initially; and

(4) Describe billing procedures and detail the schedule and mechanism for transfer of funds from telephone service supplier(s), or LEC(s), to the government entity responsible for 9-1-1 system implementation and operation; and

(5) Affirm the creation of an Emergency Telephone System Fund, as specified in the Act, specifying the use of that fund solely to defray costs associated with those items allowed in the Act, to include all telephone service suppliers' allowed charges for equipment, facilities, and services in support of the planned 9-1-1 system; and excluding those items disallowed in the Act; and

(6) Specify a mechanism for annual review and adjustment of the uniform monthly telephone subscriber charge for 9-1-1 service, so to maintain a minimal Emergency Telephone System Fund balance necessary for continuing proper support of 9-1-1 services.

I. Applications must include a comprehensive description of the planned 9-1-1 system, showing:

(1) Configuration of the planned 9-1-1 system, to include number, locations, and descriptions of PSAP's; types and quantities of equipment, and communications facilities and services to be employed initially upon implementation, and projected over the three year period following implementation; initial and projected system capacities; initial and projected reserve capacities expressed as percentages of total available capacities; and

(2) Description of real property and construction and renovation of physical structures necessary to accommodate PSAP(s) and all other facilities, to include provisions for environmental conditioning (HVAC), emergency power, and security; and

(3) Maintenance and system support resources and services necessary to ensure continuing system availability and optimal functioning; and

(4) Personnel resources and organizational structure necessary to manage, operate, and maintain the planned system, initially, and projected over the three (3) year period following implementation; and

(5) Description of the existing public telephone system within the PCA, to include: map identifying and showing extent of all telephone exchanges (prefixes) serving territory in common with the PCA; names and locations of telephone central offices (wire centers) serving those exchanges; identities of owning telephone companies; types of central office switching equipment, and counts of telephone subscribers served (capable of 9-1-1 access): counts of total access and billed lines within each telephone exchange listed; and

(6) Plans for disaster recovery and for continuing system availability and functioning during and following disaster/emergency situations, such plans to include records of federal Telecommunications Service Priority (TSP) System protection applied for, if any.

J. No Enhanced 9-1-1 system may be implemented until such time as at least eighty-five percent (85%) of all residents in the PCA have been assigned a standard street address. Applications for E911 systems must include a mapping/addressing plan and schedule verifying:

(1) That the 85% addressing requirement will be met prior to system implementation; and

(2) That duplicate addresses will be eliminated through readdressing, or, in cases where readdressing is considered not to be feasible, that any two or more distinct residences or locations within the PCA and adjacent coordination areas having the same address will be mapped for 9-1-1 response in a manner that ensures proper identification; and

(3) That planning and street naming and numbering conventions will prevent occurrence of future duplicate addressing.

K. The mapping/addressing plan must state long-term mapping/addressing policy and goals that will ensure the greatest practical extent of 9-1-1 coverage to residences and other locations

throughout the PCA. The plan must indicate policy to apply to non-addressed locations, specifically as required by the Act, as concerning residents who do not have a standardized address provided by the local government.

L. Applications must include a plan for public instruction in 9-1-1 capabilities and usage. The plan must address the following instructional goals:

- (1) Public awareness of what constitutes an emergency and a nonemergency.
- (2) Public awareness of the availability of 9-1-1 service for emergencies.
- (3) Promotion of general use of “911” rather than a 7-digit number for emergency calls.
- (4) Public awareness of the requirements of the Act for conspicuous display of street numbers at residences.

M. 9-1-1 systems for which application is made must conform to the following requirements and incorporate the following features and capabilities, except that only those features and capabilities not specifically associated with E911 systems shall be required of proposed Basic 9-1-1 systems. Specific technical capabilities generally associated with those features indicated below shall be required to the extent such capabilities are technically and economically feasible and supportable within the respective telephone system infrastructure, to include cellular system infrastructure. Applications must note and justify such exceptions. Applications must identify all facilities, features, and capabilities that are to be furnished by or through a telephone service supplier.

- (1) Continuous staffing and operation (24 hours a day, 7 days a week)
- (2) Automatic Number Identification (ANI)-automatically displays at the PSAP the telephone number of 9-1-1 caller’s telephone.
- (3) Automatic Location Identification (ALI)-automatically displays at the PSAP the address of the 9-1-1 caller’s telephone, to include coin or pay telephone locations.
- (4) Central Office Identification—allows the identity of the 9-1-1 call-receiving central office to be determined (where a single PSAP may receive 9-1-1 calls from more than one telephone central office).
- (5) Call Detail Recording—provides an electronic (e. g., magnetic tape) and printed record for each 9-1-1 call showing the caller’s telephone number, the time the call was initiated, the time the call was answered, the time the call was transferred (if appropriate), the time the call was disconnected, trunk line identification, and identification of the call answerer’s position or console.
- (6) Electronic recording of all 9-1-1 calls; retention of all call recordings for a minimum of sixty days following the date of the call. Immediate playback capability for all 9-1-1 call recordings.
- (7) A minimum of two trunk lines connecting each serving telephone central office to the E911 tandem (controlling central office), and a minimum of two trunk lines connecting the E911 tandem to the PSAP. In all cases sufficient lines, facilities, equipment, and staffing must remain continuously in service to ensure no more than one busy signal per one hundred 9-1-1 calls during normal operation, and capability to answer at least 80 percent of all 9-1-1 calls within ten seconds during normal operation.
- (8) Sufficient telephone lines, facilities, and equipment to allow immediate telephone contact between the PSAP and each law enforcement, fire protection, emergency rescue, EMS, and other service location/activity designated to receive calls for assistance through the planned system.
- (9) At least one telecommunications device for the deaf (TDD) available at each PSAP at all times.
- (10) At least one local telephone line in addition to 9-1-1 access line(s). This nonemergency telephone number must be published as such immediately following the “emergency dial 911” listing.
- (11) Sufficient standby emergency power to operate each PSAP during power failures of unlimited duration. This requirement may be relaxed if provision is made to transfer functions of each PSAP to an alternate site.
- (12) Adequate physical security to minimize the possibility of disruption of services through intentional acts, negligence, or Acts of God; adequate equipment security features to prevent

unauthorized or improper use of equipment or communications facilities; adequate security features to prevent casual and inappropriate access to data base information.

(13) Means of identifying 9-1-1 calls for highest answering priority; both audible and visual (light) indicators of incoming 9-1-1 calls.

(14) Capability to route directly and receive any cellular telephone-originated 9-1-1 call placed from any location in the corresponding cellular system's coverage area within the PCA.

(15) Coin-free dialing—9-1-1 calls must be allowed without charge from all public coin or pay telephones in the PCA.

(16) Forced Disconnect—allows the PSAP to clear a 9-1-1 line when the calling party does not, or cannot, hang up.

(17) Disconnect Tone—distinctive tone indicating that the 9-1-1 caller has disconnected.

(18) Selective Routing—automatically routes all 9-1-1 calls originating in a specific geographical area to the PSAP serving that area, irrespective of political or telephone wire center boundary alignments within the PCA.

(19) Default Routing—automatically routes a 9-1-1 call to a predesignated alternate PSAP or answering point when the 9-1-1 call cannot be selectively routed due to ANI failure or other cause.

(20) Alternate Routing—provides backup for a PSAP by routing 9-1-1 calls to predesignated alternate PSAP or answering point when all lines to the primary PSAP are busy or when the primary PSAP is out of service.

(21) Selective Transfer—capability to transfer a 9-1-1 call directly, by means of one or two keystrokes, to a different PSAP to allow proper responsiveness to calls more appropriately handled by that PSAP.

(22) Contingency plans and capability to directly reroute some, or all, 9-1-1 calls from any receiving PSAP to adjacent PSAP's in the event of incoming 9-1-1 call overload or PSAP functional degradation due to equipment failure or other causes.

(23) Contingency plans and capability to relocate any PSAP as situations may warrant. Such relocation must not significantly impair overall 9-1-1 call processing capability.

N. Applications must include detailed, written operational procedures for each PSAP, governing invocation and usage of capabilities and features listed in subsection M above, in addition to specifying all 9-1-1 call processing procedures and other PSAP activities necessary and appropriate for proper PSAP functioning over a comprehensive range of usual and unusual situations and circumstances.

O. Applications must include a detailed budget plan scheduling all anticipated revenues and expenses associated with the following items. Each budget item must show two components: [1] that part to be funded through telephone subscriber fee revenues, and [2] that part to be funded through other sources, such other sources to be identified. The budget plan must detail all expense items to be recovered wholly or in part through telephone subscriber fee revenues, and make explicit and detail this revenue schedule and recovery mechanism.

(1) Mapping and addressing activities preliminary to 9-1-1 system implementation.

(2) Other pre-implementation activities.

(3) Acquisition, construction, renovation, and readying of physical facilities.

(4) Acquisition, installation, and preliminary testing of equipment, by item, and communications facilities and circuits.

(5) Estimated initial and projected recurring costs and charges associated with telephone service supplier furnished equipment, communications facilities and circuits, and services.

(6) Estimated initial and projected personnel costs with associated full-time-equivalent (FTE) figures.

(7) Estimated training costs, itemized by source of training.

(8) Estimated initial and projected recurring costs for ongoing PSAP operation, other than personnel costs.

(9) All other projected recurring and ongoing operational expenses, detailed, to include maintenance expenses.

(10) All other costs, detailed, e.g. debt service, legal expenses, consultants fees, other miscellaneous expenses.

P. The budget plan must make explicit all planned indebtedness and debt retirement schedules.

Q. The budget plan must explicitly make provision for and schedule an annual budget reconciliation, or "true-up", in which, to allow for periodic rate adjustment, revenues received by the responsible government entity through telephone subscriber fees are reconciled with actual allowed operating expenses and other allowed expenses, to include all costs and charges pertaining to telephone service supplier supplied facilities and services. Such reconciliation may provide for carryover of Emergency Telephone System Fund surpluses to accommodate identified long-term needs. Such reconciliation may be accomplished in conjunction with the annual audit required in the Act.

**HISTORY:** Added by State Register Volume 16, Issue No. 7, eff July 24, 1992.

### **19-204. Commercial Mobile Radio System Surcharge.**

Commercial Mobile Radio System (CMRS) providers shall collect monthly CMRS Emergency 911 surcharges from each of their subscribers with a South Carolina area code, in the amount of the average of the telephone (local exchange access facility or wire line) emergency 911 surcharges collected in South Carolina's counties, as annually calculated by the CMRS Emergency Telephone Service Advisory Committee and approved by the Budget and Control Board.

The CMRS providers shall submit these collected surcharges, less two (2%) percent, if they choose, with an accounting thereof, under oath, in a form prescribed by the Department of Revenue, to the Department, on or before the twentieth day of the second month succeeding each monthly collection.

**HISTORY:** Added by State Register Volume 23, Issue No. 6, eff June 25, 1999.

## **SUBARTICLE 2**

### **SOUTH CAROLINA 211 NETWORK PROVIDER CERTIFICATION REQUIREMENTS**

(Statutory Authority: 1976 Code § 1-11-770)

### **19-210. Purpose.**

The purpose of these regulations is to establish certification criteria for entities to become certified by the Board as South Carolina 211 Network Providers as directed in Section 1-11-770(B) of the South Carolina Code of Laws.

**HISTORY:** Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

### **19-211. Definitions.**

A. "Board" means the South Carolina State Budget and Control Board, Division of the State Chief Information Officer.

B. "Board 211 Certification Process" means the application of criteria established by the Board for certification of a 211 provider in the South Carolina 211 Network.

C. "211" means a three digit dialing code assigned by the Federal Communications Commission (FCC) to be used for community information and referral purposes.

D. "South Carolina 211 Network" means the system of 211 providers certified by the Board that provide 211 services in the state.

E. "South Carolina 211 Network Provider" means an information and referral organization whose primary purpose is to maintain information about human service resources in the community, supply descriptive information about the agencies or organizations that offer services, and assist consumers in accessing appropriate providers.

F. "Alliance of Information and Referral Systems" or "AIRS" means a non profit, as defined by Section 501(c) (3) of the federal tax code, professional membership organization for information and referral providers.

G. "Alliance of Information and Referral Systems accreditation" or "AIRS accreditation" means a process by which the Alliance of Information and Referral Systems determines whether information and referral programs are in compliance with the standards set forth in the current edition of the *Standards for Professional Information and Referral*.

H. "Alliance of Information and Referral Systems certification" or "AIRS certification" means the awarding of professional credentials to individuals who successfully complete the Alliance of Information and Referral Systems certification program.

I. "AIRS/INFO LINE Taxonomy of Human Services" means the national standardized service classification system used to facilitate retrieval of community resource information, increase the reliability of planning data, make evaluation processes consistent and reliable, and facilitate national comparisons of data.

J. "Candidate" means an organization that requests to be certified by the Board to become a South Carolina 211 Network Provider in the South Carolina 211 Network.

K. "Client information" means any information that can be used to identify a specific individual to whom services are being provided.

L. "Donation management" means assisting individuals or agencies to make financial or in kind contributions to community organizations.

M. "Volunteer Management" means assisting individuals or organizations to provide volunteer services to the community.

N. "Information and Referral Services" mean programs whose primary purpose is to maintain information about human service resources in the community, to link people who need assistance with appropriate service providers, and to supply descriptive information about the agencies or organizations that offer services.

O. "Provisional certification" means the temporary certification granted by the Board to a South Carolina 211 Network Provider that loses AIRS accreditation.

P. "*Standards for Professional Information and Referral*" means the current edition of the document published by the Alliance of Information and Referral Systems that defines the national standards for information and referral programs and systems.

**HISTORY: Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.**

## **19-212. Board Certification Process and Requirements.**

A. The Board shall certify a single South Carolina 211 Network Provider for each county. The minimum service delivery area for a South Carolina 211 Network Provider shall be a single county. This shall not preclude a South Carolina 211 Network Provider from serving multiple counties. To ensure the maximum use of the 211 number for information and referral services, the certified South Carolina 211 Network Provider shall be required to coordinate with all other information and referral services and the telecommunications companies within the designated county or counties. If the Board receives more than one application for South Carolina 211 Network Provider certification from organizations representing the same county, the Board will notify the organizations that the Board shall only accept one collaborative designation application per county.

B. In order to be considered to become a South Carolina 211 Network Provider, candidates shall submit to the Board a South Carolina 211 Network Provider Certification Application Form, as developed by the Board. Candidates shall also provide the Board with written documentation verifying that the organization meets the following criteria:

(1) provides 24 hour, 7 days a week coverage either on site or through written agreements with other information and referral organizations for after hours and emergency coverage, that shall be provided by personnel monitoring the 211 phone line and shall not be answered through an answering service or answering machine;



(2) adheres to the AIRS, *Standards for Professional Information and Referral*, which is incorporated herein by reference, and is AIRS accredited, or has initiated the written application process and shall become accredited within three years;

(3) has 25 percent or more of its staff that is eligible for certification through the AIRS certification program certified by AIRS as information and referral specialists or resource specialists;

(4) works collaboratively and has written agreements with specialized information and referral systems which shall include, but not be limited to, crisis centers, child care resource and referral programs, volunteer associations, elder help lines, homeless coalitions, designated emergency management systems, and 911 and 311 systems, where applicable;

(5) has an established automated information tracking system that maintains call center data that shall include, but not be limited to, call volume, number of abandoned calls, average speed of answering, average call length and other appropriate call center statistics;

(6) maintains a computerized information and referral system database that has up to date information and resource data and the capacity to collect caller information;

(7) uses the AIRS/INFO LINE Taxonomy and has incorporated the taxonomy into its resource data base;

(8) provides 211 services at no charge to callers and does not request or accept fees or compensation of any kind from referred organizations in return for referrals. Does not permit commercial advertisements to be heard on the phone lines or viewed via the internet if the 211 provider offers internet services;

(9) publicizes 211 services through a written public awareness, marketing, advertising and education plan to inform the public of available services;

(10) provides teletyping (TTY) services for speech and hearing impaired individuals and multilingual accessibility either on site, or through access to translators;

(11) has formal agreements with appropriate clearinghouse agencies that provide volunteer or donation management services;

(12) ensures quality of service and caller and customer satisfaction through the timely provision of services and appropriate follow up and written outcome evaluations;

(13) shares resource database information with other South Carolina 211 Network Providers and state and local governmental agencies, including submitting resource database information to a shared common website accessible by the public, if available;

(14) tracks information on inquirer needs, unmet needs, and barriers to services and shares this data with other South Carolina 211 Network Providers, and local and state agencies and organizations;

(15) uses a method common to all South Carolina 211 Network Providers to measure and evaluate outcomes for the operation of a 211 call center;

(16) provides proof of, or application for, authority to conduct business in the State of South Carolina;

(17) adheres to any applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

(18) submits to the Board a prospective five year budget, including a description of projected sources of funding. Candidates shall also submit to the Board an audited financial statement. This statement shall be the most recent and complete audited financial statement available and for a fiscal period not more than eighteen months old at the time of submission. Such statement shall be by an independent, certified public accountant. In the event qualifying audited financial statements are not available, an unaudited statement along with the entity's federal income tax returns for the preceding two years may be submitted.

C. South Carolina 211 Network Providers must submit to the Board an annual report documenting the information and referral services provided during the previous year including geographical areas served, call volume, number of abandoned calls, average speed of answering, average call length, information on inquirer needs, unmet needs, and barriers to services. This report shall also include a prospective budget for the upcoming year, including a description of projected sources of funding.

This report shall follow the state's fiscal year from July 1st through June 30th and shall be due to the Board on or before August 15th of each year. A provider shall also submit to the Board an audited financial statement for its most recently completed fiscal year. This statement shall be submitted no later than six months following the close of the provider's fiscal year.

D. Candidates that submit a South Carolina 211 Network Provider Certification Application Form, with accompanying written documentation that verifies compliance with the Board's certification criteria, and have AIRS accreditation shall be certified for five years as a South Carolina 211 Network Provider.

E. Candidates that submit a South Carolina 211 Network Provider Certification Application Form, with accompanying written documentation that verifies compliance with the Board's certification criteria, and that have applied for, but not yet received, AIRS accreditation shall be certified for one year as a South Carolina 211 Network Provider. Prior to certifying a candidate who does not have AIRS accreditation, the Board may conduct an onsite visit to review the candidate's compliance with the Board's certification criteria.

F. Within ninety days of the receipt of the initial South Carolina 211 Network Provider Certification Application Form, the Board shall notify a candidate of whether the candidate is in compliance with the Board's certification requirements. Such notification shall include a statement of deficiencies for candidates that are determined not in compliance with the certification requirements. Candidates determined by the Board to not be in compliance with the certification requirements, shall submit a plan of correction to the Board for review and approval within twenty one days of receipt of the statement of deficiencies. The plan of correction shall include a list of corrective actions the candidate will take to remedy identified deficiencies and shall include the date by which each action shall be completed. The Board shall notify candidates whether their plan of correction has been approved. Candidates shall conform to the certification criteria within forty five days of receipt of the Board's notification of approval of the plan of correction, or shall be ineligible for certification by the Board. Candidates that fail to submit and adhere to an approved plan of correction shall not be certified by the Board as a South Carolina 211 Network Provider. Candidates shall be eligible to reapply for Board certification after one year from the date of notification by the Board.

G. If a South Carolina 211 Network Provider loses AIRS accreditation, yet is in compliance with the Board's certification criteria, the provider shall be granted a one year provisional certification by the Board as a South Carolina 211 Network Provider, if after consulting with AIRS, the Board determines that the provider is eligible to reapply for reaccreditation. The Board shall notify the provider that it has one year from the date of loss of accreditation by AIRS to obtain reaccreditation. Within forty five days of notification, the provider shall submit to the Board for approval a plan to secure AIRS accreditation within the provisional timeframe.

H. If the Board receives a written complaint that a South Carolina 211 Network Provider is not in compliance with the Board's certification criteria, the Board shall initiate an investigation of the complaint within forty five days of notification.

I. If the Board determines that a South Carolina 211 Network Provider is not in compliance with the Board's certification criteria, the provider shall be notified that it shall conform to the standards within forty five days of receipt of notice or lose certification by the Board.

J. The Board shall renew the certification of a South Carolina 211 Network Provider which has AIRS accreditation for an additional five years, if the provider submits a new South Carolina 211 Network Provider Certification Application Form, with accompanying written documentation that verifies compliance with the Board's certification criteria, at least ninety days prior to the termination of the certification period.

K. The Board shall renew the certification of a South Carolina 211 Network Provider which does not have AIRS accreditation, if the provider submits the following at least ninety days prior to the termination of the certification period: a new 211 South Carolina Network Provider Certification Application Form, with accompanying written documentation that verifies compliance with the remainder of the Board's certification criteria, and a written plan of how the provider intends to obtain AIRS accreditation. Prior to recertifying a provider that does not have AIRS accreditation, the Board may conduct an on site visit to review the provider's compliance with the Board's certification criteria. The Board shall renew certification for one year for a provider that does not have AIRS accreditation if the Board determines the provider is in compliance with the certification criteria. The Board shall

notify the provider if it is not in compliance with the Board's certification criteria. The provider shall have forty five days from receipt of such notification to become compliant. Providers who become compliant with the certification criteria within forty five days shall be granted an additional one year of certification.

**HISTORY:** Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

### **19-213. Dispute Resolution.**

A. Review Procedure; Exclusive Remedy. A candidate who is denied certification by the Board to become a South Carolina 211 Network Provider may seek review of the denial in the manner set forth in subsection B below within fifteen days of receiving notice of certification denial. A South Carolina 211 Network Provider whose Board certification is revoked may seek review of the revocation in the manner set forth in subsection B below within fifteen days of receiving notice of revocation.

B. Request for Review. A request for review under subsection A above shall be submitted in writing to the South Carolina 211 Network Coordinator, South Carolina State Budget and Control Board, Division of the State Chief Information Officer, 4430 Broad River Road, Columbia, South Carolina 29210-4012. A request for review shall set forth the name of the party requesting administrative review, the grounds for review with enough particularity to give notice of the issues to be decided, the relief requested, and all information relied upon by the requestor to support the relief requested.

C. Administrative Review. The administrative review shall be performed by the Director of the Division of the State Chief Information Officer, or his representative. Any representative appointed by the Director shall be generally familiar with South Carolina 211 Network Provider certification and shall not have been directly involved with the certification decision under consideration. Upon receipt of the timely request for review, the Director or representative:

- (1) shall request from the Board information used to reach the decision to deny or revoke certification;
- (2) may request from the party requesting review any information the Director or representative believes necessary to reach a decision;
- (3) may obtain any other information from any source as may in the Director's or representative's judgment be required to reach a decision; or
- (4) may make a decision solely on the information provided by the requestor in its request for review.

The Director or representative may conduct any conferences or nonadversarial proceedings the Director or representative deem necessary. Any decision to conduct a conference or other nonadversarial proceeding is solely within the discretion of the Director or representative.

D. Decision. The Director or representative shall conduct an independent evaluation of material submitted and render a written final decision setting forth the reasons for the action taken. A copy of this decision shall be mailed or otherwise furnished to the parties.

E. Finality. The decision of the Director or representative is final as to administrative review and may be appealed to the Circuit Court of the State of South Carolina, Richland County pursuant to the Section 1-23-380.

**HISTORY:** Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

### **19-214. Revocation of 211 Number.**

A. The 211 dialing code shall only be used by entities certified by the Board as South Carolina Network 211 Providers. The Board shall notify any entity that is leasing the 211 number from a local exchange company and is not certified by the Board that it has thirty days from receipt of the notification to submit the South Carolina 211 Network Provider Certification Application Form, and accompanying written documentation that verifies compliance with the Board's certification criteria. If the entity leasing the 211 number fails to submit a completed certification application form within thirty days of receipt of the notice, or fails to become certified by the Board, the Board shall notify the local exchange company that the entity is not authorized to use the 211 number.

**HISTORY:** Added by State Register Volume 30, Issue No. 4, eff April 28, 2006.

**ARTICLE 4**  
**OFFICE OF GENERAL SERVICES**

(Statutory Authority: 1976 Code §§ 10-5-210 through 10-5-320)

**19-400. SOUTH CAROLINA BARRIER FREE BUILDING DESIGN STANDARD.**

(Statutory Authority: 1976 Code §§ 40-1-40, and 10-5-220, et seq.)

**Editor's Note**

**HISTORY: Amended by State Register Volume 27, Issue No. 6, Part 2, eff June 27, 2003.**

**19-400.1. Authority.**

(A) With the exception of one and two family detached dwellings and other residential buildings to be offered for sale as individual dwelling units, every building or structure shall have all levels and areas made accessible to disabled persons in accordance with the latest edition of the American National Standards Institute, Inc. (ANSI) document A117.1, and the requirements of this section.

(B) Buildings containing dwelling units that are to be offered for rent, such as apartments, hotels, dormitories, etc., shall provide the following number of fully accessible units.

Total Number of Units	Number of Accessible Units
0 thru 19	1
20 or more	5%

Fractions of 1/2 or more shall be counted as a whole unit

**HISTORY: Amended by State Register Volume 27, Issue No. 6, Part 2, eff June 27, 2003.**

**19-400.2. Application.**

(A) There shall be no construction, alteration or leasing of a government building nor construction or renovation of a public building except in conformity with these Regulations. If the occupancy as defined in the Building Code of an existing building is changed, that building shall be made to conform to the requirements of these Regulations for the new occupancy. If the occupancy of a portion of an existing building is changed, then only such portion which is changed shall comply.

**HISTORY: Amended by State Register Volume 27, Issue No. 6, Part 2, eff June 27, 2003.**

**19-400.3. Administration.**

(A) Interpretation—Interpretation of these Regulations and provisions herein shall be the responsibility of the local building officials, in consultation with the appropriate State Officials where necessary. However, request for interpretation may be forwarded to the Accessibility Committee for the South Carolina Building Codes Council for resolution.

(B) Enforcement—The enforcement of these Regulations including investigations shall be the responsibility of the Building Official of each county or municipality within the state. If the county or the municipality does not have a Building Official, the South Carolina Building Codes Council shall enforce these Regulations.

(C) Conflicts—Where a conflict exists between these Regulations and Section 10-5-210 through 10-5-320 of the Code of Laws of South Carolina, 1976, as amended, these Regulations shall be superseded and governed by the applicable code section. Where there is conflict between these Regulations and local and municipal ordinances, these Regulations govern and shall be followed.

(D) All meetings and conferences, of an agency of this State, in which participation by the public is invited or anticipated, must be held in a place and manner that is accessible to persons with disabilities, unless there are compelling reasons why specific elements of accessibility cannot be provided. In such instances where specific elements of accessibility cannot be provided, the meeting or conference areas shall be as accessible as reasonably possible.

**HISTORY:** Amended by State Register Volume 27, Issue No. 6, Part 2, eff June 27, 2003.

## **19-410. SURPLUS PROPERTY.**

(Statutory Authority: 1976 Code § 3-9-10)

### **Code Commissioner's Note**

2011 Act No. 47, § 14(B), provided for the substitution of "intellectual disability" for "mental retardation" in the 1976 Code of Laws. At the Code Commissioner's discretion, the substitution was not made for the formal reference to the Department of Mental Retardation in this regulation.

### **19-410.1. State Plan for Surplus Property.**

#### INTRODUCTION

A. Address: State Agency for Surplus Property (SASP)  
1441 Boston Ave.  
West Columbia, S. C. 29170

B. This plan describes our primary mission. Our secondary mission is to acquire, warehouse and distribute surplus property to all eligible donees in the state in accordance with Public Law 94-519 as amended and FPMR 101.44 as amended.

C. Hours of operation: 8:00 a.m. to 4:30 p.m., Monday through Friday, except State holidays.

D. All monies for goods and services are handled directly by the accounting section of the Office of Internal Operations of the S. C. Budget & Control Board.

E. All previous regulations which deal with the Federal Surplus Property Plan and all regulations which conflict with the State Plan for Surplus Property are hereby repealed.

**HISTORY:** Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.

### **19-410.2. Designation of State Agency.**

The Office of General Services of the State Budget and Control Board has been designated as the State Agency for Surplus Property and will be responsible for administering the plan.

A. Organizational Chart (Copies of organizational charts obtained from Office of General Services).

1. Showing organizational units and functioning units. (Copies of organizational charts obtained from Office of General Services) See B(1)(b) below.

2. Showing major lines of authority.

(a) To what official the Agency Director is responsible and the supervision of organizational units.

B. Certification of Screeners.

In accordance with Federal Property Management Regulations 101-44.116 the names of State Agency personnel authorized to screen and select surplus personal property for donation will be submitted to General Services Administration for certification.

C. Physical Facilities.

(1) Summary sheets describe in detail the physical facilities.

(2) The land is owned by the State and the buildings thereon are owned by the State Agency.

(3) Location of facilities is 1441 Boston Avenue, West Columbia, South Carolina 29170.

**HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.**

### **19-410.3. Inventory and Accounting Systems.**

#### **A. Scope of Accountability System.**

All donable property approved for transfer, and donable property received, warehoused, and distributed by the State agency is accounted for under a full accountability system that meets the requirements of § 3-9-10, South Carolina Code and Public Law 94-519, as amended.

#### **B. Checking Property into SASP Custody.**

(1) Verification of property. Shipments received are verified promptly. Property is received in an area which is separated from the rest of the distribution center in order that there will be no possibility of mingling with other items available to the donees.

(2) Documentation. The shipment is physically checked against the shipping documents and the "Application for Donation of Surplus Personal Property" (Form 123).

(3) Record preparation. Identification tags are prepared and attached to the individual items. The documents are signed by the stock clerk and forwarded to the office where the inventory clerk prepares the inventory record.

(4) Overages and Shortages. Property received is verified by a physical count with the Holding Agency's shipping document. The "Application for Donation of Surplus Property" (Form 123) is also verified to the count of property received. A SF 123 will be prepared and submitted to the appropriate GSA regional office for line item overages of \$500.00 or more in accordance with FPMR 101-44.115.

(5) Recording and reporting difference. If the count of property received does not agree with the Holding Agency's shipping document, an overage and shortage report is prepared and delivered to the Holding Agency by screener for reconciliation with PDO. Over and short items not reconciled are reported to GSA regional office in accordance with FPMR Paragraph 101-44.115. Differences between items listed on Form 123 and the physical count are handled in the manner outlined above. Any such differences are also reflected by the monthly "Report of Surplus Property Received."

#### **C. Periodic Verification of Property on Hand.**

(1) Verification. The inventory or stock record cards are checked with the physical count of inventory of personal property on hand once each year.

(2) Recording of difference. Any difference between the stock cards and the actual count are reported to the distribution center manager, who, after a thorough check as to their correctness, presents these cards to the Surplus Property Officer for final determination.

(3) Reporting. Differences will be reported as in (2) above.

#### **D. Inventory Adjustments.**

(1) Report Form. Any necessary adjustments to the inventory record cards will be noted on the Inventory Adjustment form.

(2) Reporting variations.

(a) The Inventory Adjustment form will be presented to the Surplus Property Officer by the distribution center manager for inspection together with the appropriate inventory card. The Surplus Property Officer will sign those Inventory Adjustment forms requiring adjustment or take other corrective action.

(3) Adjustments. Adjustments will be made after review by the Surplus Property Officer and completion of the Inventory Adjustment form. The inventory record card will reflect the necessary adjustments. Both records will be retained in appropriate files in numerical order for a minimum period of three years.

(4) Written authority. The Surplus Property Officer will authorize adjustments as outlined in (3) above. This will apply, not only for annual inventory adjustments, but also for other necessary adjustments as well.

(5) Disposal of property of no value to program.

(a) In accordance with the procedures and requirements of FPMR 101-44.205, property will be reported to GSA for transfer to another state or disposed of by public sale, destruction or abandonment.

(b) Appropriate records are maintained to cover disposals described above.

E. Tracing Property from Receiving Document to the Issue Document.

(1) Method. At the time the inventory record cards are prepared, the state serial number of the Form 123 and line item number is entered on these cards and the identification tag which is attached to the item. When a pre-numbered warehouse issue sheet is prepared, the state serial number and line item number is also entered thereon. The warehouse issue sheet number and the date is noted on the inventory record card. Each inventory record card bears only one state serial number. When the items listed on an inventory record card are all issued, the card is filed in an inactive file. In this way, property is readily traced from the receiving document to the issue document.

(2) Reference to exhibit of inventory of property card. For the use to which the inventory card is put, see E(1) above.

F. Systematic Means of Determining Quantity of Various Types of Property Donated to Individual Donees.

(1) Description of files for each donee. Individual donee files are maintained on an annual basis which contain copies of all warehouse issue sheets showing property issued, service charges, etc. Separate files for \$5,000 or over acquisition cost items and all passenger motor vehicles are maintained (see Part X of the State Plan).

(2) Other records (if any) of property donated to each donee. A correspondence file and an invoice file is also maintained by donee.

G. Accounting System.

The Surplus Property Service Fund utilizes basic accrual accounting practices outlined in Governmental Accounting, Auditing and Financial Reporting as compiled by the National Committee on Governmental Accounting (1968).

On Deposit accounts are cash accounts with documented deposits and withdrawals.

Accounts Receivable account has all billings and payments received with net amount owed as a balance.

Buildings account has all expenditures for permanent construction and additions to structures used at the Surplus Property site.

Accumulated Depreciation–Buildings account has amount of expiration of the useful life of the buildings using the straight-line method with a twenty year base.

Office Equipment account has expenditures for non-expendable equipment that is inventoried, tagged and accounted.

Accumulated Depreciation–Office Equipment account has amount of expiration of the useful life using the straight-line method with a ten year base.

Motor Vehicle Equipment account has amount of expenditure for motor vehicle equipment.

Accumulated Depreciation–Motor Vehicle Equipment account has expended amount of useful life using straight-line method with four year useful life.

Allocated To/From State General Fund account has amounts received or returned to the State General Fund from the Surplus Property Service Fund.

Retained Earnings account shows accumulated amount of equity retained in operations.

Revenue From Operations account shows amount of sales.

Expenses (cash) account shows amount spent for operating costs.

Expenses (accrual) account shows amount applicable to accounting period.

The accounts for the Surplus Property Service Fund is kept by the Comptroller General of South Carolina and a corresponding ledger system is kept by the Office of Internal Operations, S. C. Budget and Control Board. Fixed asset accounts are kept also at the Office of Internal Operations, S.

C. Budget and Control Board where amounts for purchase of these assets are maintained by source fund.

All accounts are periodically audited by internal auditors and the State auditing staff to ascertain to the correctness of the Surplus Property Service Fund as stipulated by GAAP standards.

The State Agency is furnished detailed operating statement and balance sheet monthly, reflecting the current financial condition of the Agency.

All accounting records are maintained at the central office of the Office of General Services.

**HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.**

#### **19-410.4. Return of Donated Property.**

When determination has been made that property has not been placed in use by the donee, for the purposes for which it was donated, within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the application certification and agreement form signed by the administrative officer (or other authorized representative of the donee) as a condition of eligibility and repeated on the reverse side of each distribution document, the donee, if the property is still usable as determined by the State Agency, must:

- (a) Return the property at his own expense to the State Agency distribution center.
- (b) Re-transfer the property to another eligible donee as directed by the State Agency.
- (c) Make such other disposal of the property as the State Agency may direct.
- (d) The State Agency will periodically emphasize this requirement when corresponding and meeting with donees and when surveying the utilization of donated property at donee facilities.

#### **19-410.5. Financing and Service Charges.**

A. Section 3-9-10, Code of Laws of South Carolina, 1976. Any charges made or fees assessed by the South Carolina Office of General Services for the acquisition, warehousing, distribution or transfer of any property of the United States of America for educational, public health or civil defense purposes, including research for any such purpose which may now be or hereafter become eligible under the act, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution or transfer. The State Agency does not receive any appropriated funds from either State or Federal sources.

##### **B. Method of Computing Service Charges.**

Service charges shall be fair and equitable as related to the services performed and the direct and indirect cost of operations. In general the charges are related to the following expense factors:

- (1) Personal Service
  - (a) Clerical
  - (b) Secretarial
  - (c) Purchasing & Supply
  - (d) Security
  - (e) Labor & Trades
  - (f) Equipment Operation
- (2) Contractual Services
  - (a) Freight, Express & Delivery
  - (b) Travel
  - (c) Telegraph & Telephone
  - (d) Repairs
  - (e) Water, Heat, Lights & Power
  - (f) Other Contractual Services
- (3) Supplies



- (a) Fuel Supplies
- (b) Office Supplies
- (c) Motor Vehicle Supplies
- (d) Postage
- (e) Other Supplies
- (4) Fixed Charges & Costs
  - (a) Rents—Equipment
  - (b) Insurance
  - (c) Contributions & Dues
- (5) Equipment
  - (a) Office Equipment
- (6) Depreciation

A chart has been prepared for computing service and handling charges by applying percentage factors to acquisition cost in ranges to permit consideration of property conditions, desirability, normal market value, quantity available, etc. (See chart, infra)

#### C. Minimal Charges.

(1) In cases where property is located and screened exclusively by a donee screener at a Holding Agency where state screeners do not visit, the service charge will be reduced, as a general rule, by 10%.

(2) On direct transfers of property from the Holding Agency to the donee, where the donee pays all transportation costs, the service charge may, as a general rule, be reduced by 25%, when compared to similar items transferred from the State Distribution Center.

(3) Service and handling charges assessed for donated property to providers of assistance to homeless individuals shall be at nominal cost for care and handling.

#### D. Special Donations.

In cases involving major items of property or otherwise when unusual expenses may be incurred, the State Agency may mutually arbitrate with the donee for a fair and equitable service charge.

#### E. Evaluation of Service Charges.

The relation of service charges to the total costs of operation will be evaluated on a quarterly basis. The service charges will be revised in accordance with the evaluation results.

F. Funds accumulated from service charges including such funds accumulated from donee service charges before October 17, 1977, or from other sources such as sales or compliance proceeds, will be used to cover direct and indirect costs of the State Agency's operation, to purchase necessary equipment, to rehabilitate donable surplus property, to provide normal upkeep of office and distribution center facilities, to purchase necessary equipment and supplies, to purchase replacement parts for donable property items, to acquire or improve office space or distribution center facilities as authorized in § 3-9-10 of the South Carolina Code.

#### G. Capital Reserve Fund.

A reasonable working capital reserve fund will be maintained (the previous year's total overhead expenses) and should this reserve become excessive, a reduction in service charges shall be made to all donees on future transfers.

#### H. Deposits of Service Charge Funds.

All moneys are deposited with the State Treasurer in a Revolving General Fund and designated by a separate account in accordance with § 11-14-30 of the South Carolina Code, 1976.

#### I. Disposition of Funds if Facilities are Sold.

All moneys arising from the sale of facilities shall be paid into the State Treasurer and shall be kept on a separate account by the Treasurer as a fund to be drawn upon the warrant of the Budget and Control Board for the exclusive use and purpose which have been or shall be declared in relation to the General Fund, in accordance with § 11-9-620 of the South Carolina Code, 1976.

J. Means and Methods of Financing.

(1) The State Agency receives no appropriated funds from the State or Federal Government. The Agency is financed solely from the assessment of service and handling charges on Federal surplus personal property donated. Authority for this is covered by State statutes as defined in Part I of the State Plan, Paragraph B(1).

Chart for Computing Service and Handling Charges

(a) Percent of A/C	(b) Acquisition Cost	(c) Service Charge Range
0-50%	0-\$10	0-\$5
0-40%	\$10-\$100	0-\$40
0-30%	\$100-\$200	0-\$60
0-25%	\$200-\$1500	0-\$375
0-10%	\$1500-\$5000	0-\$500
0- 5%	\$5000-\$20,000	0-\$1000
0- 3%	\$20,000-\$50,000	0-\$1050
0- 1%	\$50,000-\$100,000	0-\$1000
Open	Over \$100,000	Negotiable

Exceptions:

- (a) Rehabilitated property—Direct costs for rehabilitating property will be added to the charge.
- (b) Overseas property—Additional costs for screening and returning property will be added.
- (c) Extraordinary and/or unusual transportation charges—Charges on property with “out-of-the ordinary” or “unusual transportation cost” will be added.
- (d) Special Handling—An additional charge may be made for dismantling, packing, crating, shipping, delivery and other extraordinary charges.
- (e) Adjustment in acquisition cost—When the acquisition cost of an item is unrealistic, an adjustment will be requested from the GSA Regional Office prior to assessment of service charge.
- (f) Lotted property—Property issued by the pound will not be covered by the above schedule. Service charges will be assessed on a price per pound basis.
- (g) Fair market value—In certain special cases service charges may be assessed on a basis of the fair market value of the property.

NOTE: The above schedule will be re-evaluated periodically for comparison of operating expenses with income receipts, at which time the percentage of acquisition cost (Col. a) will be adjusted accordingly.

**HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.**

**19-410.6. Terms and Conditions on Donable Property.**

A.(1) The State Agency will require each eligible donee, as a condition of eligibility, to file with the State Agency an application, certification and agreement form outlining the certifications and agreements, and the terms, conditions, reservations and restrictions, under which all Federal surplus personal property will be donated. Each form must be signed by the chief executive officer of the donee institution agreeing to these requirements prior to the donation of any surplus property. The certifications and agreements and terms, conditions, reservations and restrictions will be printed on the reverse side of each State Agency Issue Document.

(2) The following periods of restriction are established by the State agency on all items of property with a unit acquisition cost of \$5,000 or more, and on all passenger motor vehicles.

- (a) Passenger motor vehicles—18 months from date the property is placed in use.
- (b) Items with a unit acquisition cost of \$5000 to \$10,000—18 months from the date the property is placed in use.
- (c) Items with a unit acquisition cost over \$10,000—30 months from the date the property is placed in use.

(d) Aircraft (except combat type) and vessels (50 feet or more in length) with a unit acquisition cost of \$5,000 or more—60 months from the date the property is placed in use. Such donations shall be subject to the requirements of a Conditional Transfer Document.

(e) Aircraft (combat type)—restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a Conditional Transfer Document.

(3) The State Agency may reduce the period of restriction on items of property falling within the provisions of Part VI, Paragraph A, Subparagraph (2), sub-paragraphs (c) and (d), at the time of donation but not less than for a period of 18 months from the date the property is placed in use, for good and sufficient reasons, such as the condition of the property, or the proposed use (secondary utilization, cannibalization, etc.).

(4) The State Agency, at its discretion and when considered appropriate, may impose such terms, conditions, reservations and restrictions, as it deems reasonable on the use of donated property other than items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles.

B.(1) The State Agency may amend, modify, or grant release of any term, condition, reservation or restriction, it has imposed on donated items of personal property in accordance with the standards prescribed in this plan, provided that the conditions pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of the State Agency and made a matter of public record.

(2) The State Agency will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property.

(3) The State Agency will impose on all donees the statutory requirement that all items donated must be placed in use within one year of donation and be used for one year after being placed in use or otherwise returned to the State Agency while the property is still usable.

(4) The State Agency cannot amend, modify or release the requirements of Sub-paragraph B(2) and B(3) above.

(5) Cannibalization of items on which GSA has imposed special handling conditions or use limitations will require prior GSA approval during the period of restriction.

**HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.**

### **19-410.7. Non-utilized Donable Property.**

A. All property in the possession of the State Agency for 18 months, that cannot be utilized by eligible donees, shall be reported to the General Services Administration for disposal authorization as described in FPMR 101-44.205. In accordance with this regulation the State Agency shall:

1. Transfer the property to another State or Federal Agency.
2. Sell the property by public sale.
3. Abandon or destroy the property.

B. In the event of disposal by transfer to another agency or by public sale, the State Agency may seek such reimbursement as authorized in FPMR 101-44.205.

### **19-410.8. Fair and Equitable Distribution.**

A. The State Agency shall provide for a fair and equitable distribution of available surplus property to the eligible donees in the State based upon their relative need and resources and their ability to utilize the property in their program.

(1) Need. In determining relative needs of eligible entities, the following factors, among others, will be considered:

- (a) Expression of interest by the eligible donee for specific items of property.
- (b) Justification of expressed needs defining proposed purposes for use of property.
- (c) Indication of whether the needs are continuing or temporary.
- (d) Nature of requested items—whether common use and readily available items or more specialized and not readily obtainable.
- (e) Record of previous donations of similar or like items to the donee.

(f) Past performance in prompt pick-up and utilization of property, including prompt payment of service charges.

(g) Location of property in relation to the requesting donee.

(h) Extraordinary needs created by disasters such as storms, floods, fires, etc.

(i) Population to be served by property requested.

(2) Resources. The following factors will be evaluated in establishing relative resources of eligible donees who have expressed specific needs:

(a) Availability of funds—whether tax-appropriated funds, Federal or State grants, tuition or charges for services, donations or contributions, or other sources.

(b) Assessment of financial ability including data pertaining to inability to purchase from other sources, relative income and economic conditions, and other appropriate data.

(3) Utilization. In determining utilization capability for property needs expressed, the following factors, among others, will be considered:

(a) Statement of utilization potential for requested property.

(b) Area in square miles to be served by requested property.

(c) Plans for continued or temporary use of property.

(d) Capability for repair and maintenance of property.

B. The State Agency shall review information submitted by the donee at the time of his certification of eligibility, or at other times, to establish priorities to ensure fair and equitable distribution in accordance with the donee's relative need, resources and ability to utilize the desired property.

C. The State Agency shall establish and maintain a want list for items of property that are not generally available in the distribution center and allocate this property, when it becomes available, in accordance with the requesting donees' relative need, resources and ability to utilize the desired property.

D. The State Agency will authorize, insofar as practical, direct pick-up or shipment of available property for the donee for a reduced service charge as provided in Part V of the plan. The State Agency will provide the recipient with a letter authorizing release of the property directly to the donee. The State Agency shall, insofar as practicable, select property requested by an eligible donee within the State.

E. The State Agency shall recommend to General Services Administration the certification of donee screeners, as are qualified and needed, in accordance with FPMR 101-44.116.

### **19-410.9. Eligibility.**

A. Scope.

The State Agency procedures for determining the eligibility of public agencies and non-profit educational and public health institutions and organizations in the State shall be those standards and guidelines as set forth in FPMR 101-44.207.

B. Determination of Eligibility.

The State Agency is responsible for the determination that an applicant is eligible as a public agency or a non-profit educational or public health institution or organization to participate in the program and receive donations of surplus personal property, and to utilize such property for the purposes authorized by the act. In establishing a listing of potential donees the following sources of information will be utilized:

(1) Public Agencies

(a) The Secretary of State

(b) The South Carolina Legislative Manual

(2) Non-profit, Tax-exempt Institutions

(a) State Departments of Education, Higher Education, Public Health, Mental Health, Mental Retardation, Youth Services and others for listing of all local units approved or licensed by them.

- (b) Existing records of institutions now eligible under the existing Surplus Property Program.
  - (c) State and regional organizations and associations.
  - (d) Inquiries, letters, telephone calls, etc., received regarding eligibility.
  - (e) Contacts may be made by letter, telephone calls, general meetings, or conferences with above groups, supplemented when necessary by news release, information bulletins. Special efforts will be made to present the Surplus Property Program at conferences and meetings.
- C.(1) As a condition of eligibility each unit will be required to file with the State Agency:
- (a) An Application Certificate and Agreement Form signed by the Chief Administrative Officer accepting the terms and conditions under which property will be transferred.
  - (b) A written authorization from the Chief Administrative Officer or executive head of the donee activity, or a resolution of the governing body, designating one or more representatives to act for the applicant, obligate any necessary funds, and execute issue sheets.
  - (c) Assurance of Compliance indicating acceptance of Civil Rights and Non-Discrimination on the basis of sex in accordance with GSA regulations and requirements.
  - (d) A Directory Information Form including legal name of applicant, address and telephone number and their status as a public agency or non-profit, tax-exempt educational, or public health unit.
  - (e) Details and scope of their program including their different activities and functions.
  - (f) Listing as to the types and kinds of equipment, vehicles, machines or other items they need.
  - (g) Financial information if necessary to help in evaluation of their relative needs and resources.
  - (h) Proof of their tax-exemption under Section 501 of the Internal Revenue Code of 1954 (for non-profit units only.)
  - (i) Proof that the applicant is approved, accredited or licensed in accordance with FPMR 101-44.207.

D. Maintaining Eligibility.

- (1) Eligibility files are maintained for each donee, alphabetically by County.
- (2) The State Agency shall update each donee's eligibility on a periodic basis, but not less than once every three years, to ensure continuing eligibility.
- (3) The State Agency shall terminate its distribution of property to the activity when the eligible donee ceases to operate, loses its license, accreditation, or approval or otherwise fails to maintain its eligibility status.
- (4) The State Agency may, at its option, terminate distribution of property to the donee if service charge accounts are delinquent ninety days or more, or at any time the State Agency determines that the activity is without adequate resources to pay its obligations.

E. Conditional Eligibility.

- (1) In certain cases where newly organized activities have not commenced operations or may not have been approved, accredited, or licensed as may be required as eligible donees, the State Agency may, under certain circumstances as outlined in FPMR 101-44.207(i), establish a conditional eligibility for the activity.

**19-410.10. Compliance and Utilization.**

A. Scope of Survey

- (1) The State Agency shall effect reviews for compliance by donees with the terms, conditions, reservations and restrictions imposed on:
  - (a) Any property not placed in use within one year from the date of acquisition and not used for a period of one year after being placed in use.
  - (b) Any passenger motor vehicle.
  - (c) Any item of property with an acquisition cost of \$5,000 or more.
  - (d) Any item having characteristics that require special handling or use limitations imposed by GSA.

(e) Any other items of property that the State Agency may impose special restrictions.

B. Method of Survey.

(1) Within 6 months after issue of restricted property (acquisition cost of \$5,000 or more and all passenger motor vehicles), a form letter is mailed to donee requesting verification of usage and location of property.

(2) If letter is returned indicating proper usage of property, the letter is filed with invoice and document in restricted file. If letter indicates that property has not been put into use but will be used at a later date, a follow-up letter will be mailed to correspond with date specified by donee.

(3) In case of a negative reply or no reply, qualified State Agency personnel will then make a physical check of the property at the donee institution and submit "Utilization Check Form" to Surplus Property Officer, also, make verbal report.

(4) During the course of such visits, items under \$5,000 in possession of the donee are observed to determine property utilization to learn of any unique or unusual uses which can be passed on to other donees, and to determine any misuse or unauthorized disposal made of property donated.

(5) During any review the State Agency representative will ensure that the donee is complying with any special handling conditions or use limitations imposed on items of property by GSA in accordance with FPMR 101-44.108.

C. Report on Surveys.

(1) Main points covered in reports.

(a) These reports cover a detailed list of property checked, any misuses or good uses of properties, apparent stockpiling, other needs of donees for property, major points of discussion with donee, and the reporter's pertinent personal observation.

(2) All reports are received and reviewed by the Surplus Property Officer. Effective action will be taken to correct noncompliance and to enforce terms, conditions, reservations and restrictions as set forth.

D. Action Taken on Reports.

(1) Indication of Fraud

(a) The State Agency will initiate appropriate investigation of alleged fraud in the acquisition of donable property and notify the FBI and GSA of allegations immediately.

(b) If the investigation indicates fraud, a written report will be made to the FBI and GSA by the State Agency and full cooperation will be rendered in resolving the problems presented.

(c) The State Agency is not authorized to prosecute any actions for the State of South Carolina, but will take whatever actions are necessary to aid in prosecuting cases of alleged fraud or misuse, and assist GSA or other responsible Federal or State agencies in investigating such cases upon request.

(2) Unauthorized disposal of items of \$5,000 and over and passenger motor vehicles.

(a) Whenever possible the property will be placed in use. When it cannot be immediately placed into eligible use, it will be returned to the State Agency distribution center, unless circumstances make this impractical. Donations to the institution will be suspended until the matter is properly evaluated. The case will be reported to the GSA Regional Office for further action.

(3) Misuse of \$5,000 and over items and passenger motor vehicles.

(a) As in C(2) above.

(4) Lack of use of items of \$5,000 and over and passenger motor vehicles.

(a) As in C(2) above.

(5) Stockpiling

(a) If a report indicates property is being stockpiled, the institutional representative will be contacted and the matter discussed. Methods to prevent such stockpiling will be developed to remedy the situation. If the situation appears to warrant a return of the stockpiled property, the donee may be requested to return the property to the State Agency for further donee distribution.

E. Type or Title of Personnel Making Surveys.

(1) These visits are made by qualified State Agency employees, including the Surplus Property Officer and screeners.

**HISTORY:** Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.

### **19-410.11. Consultation with Advisory Bodies, Public and Private Groups.**

A.(1) The State Agency will arrange for and participate in local, regional or statewide meetings of such public and private organizations and associations representing public agencies, educational, public health, library, museums, civil defense, etc., to disseminate information on the program, discuss procedures and problems and obtain the recommendations on determining relative needs, resources and the utilization of property and how we can provide a more effective service.

(2) The State Agency will regularly provide information on the donation program to state and local officials, and to heads of nonprofit institutions and organizations and will actively participate in and provide speakers for conferences and meetings held by public and private organizations upon request.

(3) The State Agency in consultation with advisory bodies and public and private groups will write eligible donees to submit expressions of need and interest for property items so that the State Agency may advise the General Services Administration of such requirements, including requirements for specific items of property.

### **19-410.12. Audit.**

A. Audit.

(1) An external audit of the operations and financial affairs of the State Agency will be made by the South Carolina State Auditor at least every two years. The audit shall include a review of the conformance of the State Agency with the provisions of the State Plan of Operation and the requirements of 41 CFR 101-44. Copy of this audit shall be forwarded upon completion to the GSA Regional Office with advice as to corrective action taken with respect to any exceptions or violations, indicated by the audit. Internal audits will be made as required by the South Carolina Office of General Services.

(2) It is agreed that GSA may, for appropriate reasons, conduct its own audit of the State Agency following due notice to the Governor of the State of South Carolina the reasons for such audit. It is also agreed that GSA may visit the State Agency for purposes of reviewing the Agency's operation when deemed appropriate.

(3) Financial records and all other books and records of the State Agency will be made available for inspection by GSA, GAO, or other authorized Federal activities.

### **19-410.13. Cooperative Agreements.**

A.(1) The State agency has the authority and will enter into such cooperative agreements with Federal agencies or other states in accordance with FPMR 101-44.206. Such agreements will involve, but will not be limited to, the following:

- (a) Use of property by the State Agency
- (b) Overseas property
- (c) Use of Federal Telecommunications System
- (d) Inter-state transfers
- (e) Others, as deemed necessary

### **19-410.14. Liquidation.**

A.(1) Preparation of Plan

(a) In the event of, or at the time a determination has been made by State officials to liquidate the State Agency, a liquidation plan shall be prepared in accordance with FPMR 101-44.202(c)(14).

(2) The Plan Will Include:

- (a) Reasons for Liquidation.
- (b) Schedule and estimated date of termination.

(c) Method of disposal of surplus property on hand, consistent with the provisions of FPMR 101-44.205.

(d) Method of disposal of any agency physical and financial assets.

(e) Retention of books and records for a two year period following liquidation.

(3) Such plan will be submitted to the General Services Administration and approval secured prior to the beginning of the liquidation.

### **19-410.15. Forms.**

A. The Distribution Document used will be an issue sheet, as described in Part III, Paragraph E of the State Plan. The Document is a 4-part color coded document, pre-numbered, to cover all issues of surplus property made to eligible donees or to other states. The white copy (original) will be used for billing purposes in the State Agency office, then filed in donee folder with copy of invoice. The yellow copy is used at the Agency for posting to stock records and is maintained in files at the distribution center in numerical order. The pink copy is forwarded to the Agency's central office accounting for invoice mailing to the donee and setting up accounts receivable records. The blue copy is furnished to the donee when he signs for and picks up property.

B. Each restricted item issued is listed on a separate Distribution Document, with proper description and notation on the Document as to restricted time limit.

C. Aircraft and vessels (over 50 feet in length) with a unit acquisition cost of \$5,000 or more will be donated in accordance with provisions of a Conditional Transfer Document.

**HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.**

### **19-410.16. Records.**

A.(1) Official records of the State Agency shall be retained for a period of not less than three years.

(2) Records of property subject to restrictions for more than two years shall be kept one year beyond the specified period of restriction.

(3) Should property be in compliance status at the end of the period of restriction, records shall be retained for at least one year after the case is closed.

## **19-415. INSURANCE RESERVE FUNDS.**

(Statutory Authority: 1976 Code § 1-11-140)

### **19-415.1. Authority for Tort Liability Insurance—Information Service.**

The State Budget and Control Board, through the Office of General Services, is authorized to provide insurance for personnel employed by the State, its departments, agencies, institutions, commissions or boards, so as to protect such personnel against tort liability arising in the course of their employment. The Insurance Reserve Funds, formerly the Insurance Sinking Funds, shall be administered by the Chief of Insurance for the Office of General Services.

By codifying copies of the Tort Liability policy and the Medical Employee Professional Liability Insurance policy, and the Automobile Liability Certificate of Insurance, the Office of General Services purports to provide the public with information regarding the nature, terms, and scope of the insurance which it provides under § 1-11-140 of the 1976 Code.

### **19-415.2. Nature, Terms and Scope of Insurance Policies.**

A. The nature, terms and scope of the Insurance Reserve Funds' tort liability is declared in the policy entitled "General Liability Policy." This policy may be revised at the discretion of the Office of General Services.

B. The nature, terms, and scope of the Insurance Reserve Funds' liability for medical employee professionals is declared in the policy entitled "Medical Employee Professional Liability Insurance." This policy may be revised at the discretion of the Office of General Services.



C. The nature, terms, and scope of the Insurance Reserve Funds' liability for automobiles is declared in the policy entitled "Automobile Liability." This certificate may be revised at the discretion of the Office of General Services.

**19-415.3. General Liability Policy.**



CERTIFICATE NO. \_\_\_\_\_

**State Budget and Control Board**  
**Division of General Services**  
of the State of South Carolina

**TORT LIABILITY**  
**CERTIFICATE OF INSURANCE**

ITEM I. Named Insured - Employees including elective or appointive officers or members of the Board of Trustees, Directors or Governors of: .....

ITEM II. Certificate Period: From: .....  
To: .....  
12:01 A.M. Standard Time at the address of the named Employer as stated herein.

ITEM III. This insurance applies only while the person or persons insured are acting within the scope of their duties for the Employer designated in ITEM I above.

ITEM IV. The limit of liability for personal injury and/or property damage each occurrence: \$300,000.00

ITEM V. Premium Computation: (\$7.50 - \$25.00)

Provisional Rate Per Employee and Other Designated ITEM I	Number of Insured Persons	Advance Premium
\$ .....	.....	\$ .....

ITEM VI. The rights and liabilities of the parties insured will be governed by the terms and conditions of the original policy which may be amended by subsequent endorsements. This certificate of insurance neither affirmatively nor negatively amends, alters or extends the coverage afforded by Policy ..... In the event of any material change in, or cancellation of, the policy thirty (30) days notice will be provided to the Employer to whom this certificate has been issued.

IN WITNESS WHEREOF The State Budget and Control Board of the State of South Carolina, through the Division of General Services executed and attested these presents.

DIVISION OF GENERAL SERVICES

*F. E. McEachern, Jr.*

F. E. McEachern, Jr.  
Division Director

By \_\_\_\_\_  
Chief of Insurance

INSURED

**Declarations**

Item 1 Insured:

Employees including elective or appointive executive officers or members of the board of trustees, directors or governors of public bodies of the State of South Carolina (or any subdivision thereof) to whom a certificate of insurance has been issued indicating that coverage is afforded by this policy.

Item 2. Policy Period: From: January 1, 1975  
To: January 1, 1980  
12:01 A.M. Standard Time

Item 3. Limit of Liability:

The limit of the Fund's Liability for personal injury and/or property damage each occurrence or event: \$300,000.

Endorsements attached to policy at inception: Nuclear Energy Liability Exclusion A-0009.

Errors and Omissions Endorsement

January 1st, 1976.

State of South Carolina Budget and Control Board  
Office of General Services  
Countersigned by

---

Authorized Representative

GENERAL LIABILITY POLICY

State of South Carolina Budget and Control Board

Office of General Services

(Herein called the Fund)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the Employer as follows:

I. Insuring Agreements

A. Coverage

The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or property damage to which this policy applies, caused by an occurrence or event, and the Fund shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Fund shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Fund's liability has been exhausted by payment of judgments or settlements.

B. Supplementary Payments

The Fund will pay, in addition to the applicable limit of liability:

(1) all costs taxed against the insured in any suit defended by the Fund and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Fund has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Fund's liability thereon;

(2) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy;

(3) reasonable expenses incurred by the insured at the Fund's request in assisting the Fund in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

C. Limit of Liability

The Fund's liability with respect to each occurrence or event, shall not exceed the amount stated in Item 3 of the declarations. It is further agreed that the insurance afforded applies separately to each insured against whom claim is made or suit is brought but the inclusion in this policy of more than one insured shall not operate to increase the limit of the Fund's liability.

D. Policy Period, Territory

This policy applies to occurrences or events happening anywhere during the policy period.

## II. Exclusions

This policy does not apply:

- (a) to liability assumed by the insured under any contract or agreement;
- (b) to personal injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, watercraft, or aircraft;
- (c) to personal injury or property damage arising out of and in the course of the transportation of mobile equipment by any automobile;
- (d) to personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (e) to personal injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution;
- (f) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (g) to any employee with respect to bodily injury to or the death of another employee of the same employer;
- (h) to property damage to:
  - (1) property owned or occupied by or rented to the insured or the insured's employer, or
  - (2) property used by the insured, or the insured's employer or property in the care, custody or control of the insured or the insured's employer or as to which the insured or the insured's employer is for any purpose exercising physical control.
- (i) to personal injury or property damage due to:
  - (1) the rendering of or failure to render
    - (a) medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
    - (b) any service or treatment conducive to health or of a professional nature; or
    - (c) any cosmetic or tonsorial service or treatment;
  - (2) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or
  - (3) the handling of or performing of autopsies on dead bodies;
- (j) to personal injury or property damage if liability is imposed:
  - (1) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
  - (2) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person.
- (k) to property damage to public property to the extent such property is insured under a property insurance policy or certificate issued by the Fund.

## III. Definitions

When used in this policy (including endorsements forming a part hereof):

- (a) Automobile means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;
- (b) Employer means the employer designated in item 1 of the declarations;

(c) Insured means the person or persons designated in the declarations while acting within the scope of his duties for his employer;

(d) Mobile equipment means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the insured or the insured's employer, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

(e) Occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

(f) Personal injury means:

(1) bodily injury, sickness, shock, mental anguish and mental injury including death resulting therefrom sustained by any person caused by an occurrence;

(2) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or humiliation;

(3) libel, slander, defamation of character, invasion or rights of privacy, discrimination, or violation of Civil Rights; or

(4) assault and battery not committed by or at the direction of the insured, unless committed for the purpose of protecting persons or property.

(g) Property damage means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

#### IV. Conditions

A. Premium. All premiums for this policy shall be computed in accordance with the Fund's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

B. Insured's Duties in the Event of Occurrence, Claim or Suit.

(1) in the event of an occurrence or event, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Fund or any of its authorized agents as soon as practicable.

(2) if claim is made or suit is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.

(3) the insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

C. Action Against Fund. No action shall lie against the fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Fund.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Fund as a party to any action against the insured to determine the insured's liability, nor shall the Fund be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Fund of any of its obligations hereunder.

D. Other Insurance. The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Fund's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Fund shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(1) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(2) Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

E. Subrogation. In the event of any payment under this policy, the Fund shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

F. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Fund from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy signed by a duly authorized officer of the Fund.

G. Assignment. Assignment of interest under this policy shall not bind the Fund until its consent is endorsed hereon; if, however, the insured shall die, such insurance as is afforded by this policy shall apply (1) to the insured's legal representative, as the insured, but only while acting within the scope of his duties as such.

H. Cancellation. This policy may be cancelled by the Employer by surrender thereof to the Fund or any of its authorized agents or by mailing to the Fund written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Fund by mailing to the Employer at the address shown in this policy written notice stating when not less than thirty days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Employer or by the Fund shall be equivalent to mailing.

If the Employer cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Fund cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

I. Declarations. By acceptance of this policy, the Employer agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Fund or any of its agents relating to this insurance.

IN WITNESS WHEREOF The State Budget and Control Board of the State of South Carolina, through the Office of General Services executed and attested these presents.

Office of General Services

By \_\_\_\_\_  
Chief of Insurance

Endorsement  
A0009

## NUCLEAR ENERGY LIABILITY EXCLUSION

### ENDORSEMENT

It is agreed that:

I. The policy does not apply:

A. Under any Liability Coverage, to bodily injury or property damage.

(1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used in this endorsement:

“hazardous properties” include radioactive, toxic or explosive properties;

“nuclear material” means source material, special nuclear material or byproduct material;

“source material”, “special nuclear material”, and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

“spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

“waste”, means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

“nuclear facility” means

(a) any nuclear reactor;

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste.

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

“nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

“property damage” includes all forms of radioactive contaminations of property.

#### ERRORS & OMISSIONS ENDORSEMENT

(This is a claims made coverage endorsement)

The Fund, in consideration of the payment of the premium and subject to all of the provisions of the policy not expressly modified herein, agrees with the Employer as follows:

Coverage—Errors and Omissions Liability The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of a breach of duty arising out of any negligent act, error or omission of the insured if claim is made or suit is brought during the policy period, or if the negligent act, error or omission is committed during the policy period, within twenty-four months after expiration or termination of the policy and the Fund shall have the right and duty to defend any suit against the insured seeking damages on account of such negligent act, error or omission even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Fund shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Fund’s liability has been exhausted by payment of judgments or settlements.

##### Additional Exclusions

All exclusions of the policy applicable to Coverage A also apply to the insurance afforded by this endorsement. In addition this insurance does not apply:

- (a) to personal injury or to property damage;
- (b) to any dishonest, fraudulent, criminal or malicious act or omission;
- (c) to disappearance of any tangible property (including money) or the loss of use thereof;
- (d) to any claim arising out of the Employee Retirement Income Security Act of 1974 or any amendment thereto;
- (e) to any claim or suit for a negligent act, error or omission committed prior to January 1, 1976.

This endorsement forms a part of Policy No. GL-0001 issued by the State of South Carolina Budget and Control Board Office of General Services.

Effective Date of Endorsement: January 1, 1976

Countersigned by \_\_\_\_\_

Date \_\_\_\_\_

Endorsement No. 1

**19-415.4. Medical Employee Professional Liability Insurance.**

No. \_\_\_\_\_



State Budget and Control Board  
**Division of General Services**  
of the State of South Carolina

**MEDICAL EMPLOYEE PROFESSIONAL LIABILITY INSURANCE**

Limits of Liability – Each Claim \$ \_\_\_\_\_ Aggregate \$ \_\_\_\_\_  
Rate \$ \_\_\_\_\_ per bed/bassinet and/or out patient (per 100). Under and pursuance of authority conferred upon them by law and in consideration of the stipulations herein named and of \_\_\_\_\_  
premium does insure \_\_\_\_\_  
located in \_\_\_\_\_, South Carolina for the term of \_\_\_\_\_

From \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ at Noon  
To the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ at Noon

IN WITNESS WHEREOF The State Budget and Control Board of the State of South Carolina, through the Division of General Services executed and attested these presents.

**DIVISION OF GENERAL SERVICES**

Division Director  
F. E. McEachern, Jr.

By \_\_\_\_\_  
Chief of Insurance

Definitions

When used in reference to this insurance "damages" means all damages, including damages for death, which are payable because of injury to which this insurance applies. "Insured" means any person qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claims are made or suit is brought, except with respect to the limits of the Fund's Liability;

"Named Insured" means the persons named on the face of this policy.

Conditions

A. Premium. All premiums for this policy shall be computed in accordance with the Fund's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

B. Inspection and Audit. The Fund shall be permitted but not obligated to inspect the named insured's operations at any time. Neither the Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the named insured or others, to determine or warrant that such operations are safe. The Fund may examine and audit the named institution's books and records at any time during the policy period and extensions thereof and within three (3) years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

C. Insured's Duties in the Event of Occurrence, Claim or Suit.



(1) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Fund or any of its authorized agents as soon as practicable. The named insured shall promptly take at his expense all reasonable steps to prevent other bodily injury or damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this policy.

(2) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.

(3) The insured shall cooperate with the Fund and upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right on contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

D. Action Against Fund. No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Fund as a party to any action against the insured to determine the insured's liability, nor shall the Fund be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Fund of any of its obligations hereunder.

E. Other Insurance. In consideration of fact that this insurance is written at a reduced premium the insurance afforded by this policy is excess insurance. Should the insured have other insurance applicable to a loss under this policy on an excess contingent or primary basis this policy will come into effect only after other such insurance has been exhausted. When both this insurance and other insurance apply to the loss on the same basis, excess or contingent, the Fund shall not be liable under this policy for a greater proportion of the loss than stated in the applicable contribution provision below.

(1) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(2) Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

F. Subrogation. In the event of any payment under this policy, the Fund shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

G. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Fund from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized officer of the Fund.

H. Assignment. Assignment of interest under this policy shall not bind the Fund until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy

shall apply to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such.

I. Cancellation. This policy may be cancelled by the institution by surrender thereof to the Fund or any of its authorized agents or by mailing to the Fund written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Fund by mailing to the institution, at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the institution or by the Fund shall be equivalent to mailing.

J. Declarations. By acceptance of this policy, the named institution agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between institution and the Fund or any of its agents relating to this insurance.

#### I. Coverage

The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to any person arising out of the rendering of or failure to render, during the policy period, the following services:

- (1) medical, surgical, dental or nursing treatment to such person or the person inflicting the injury including the furnishing of food or beverages in connection therewith,
- (2) furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances if the injury occurs after the named insured has relinquished possession thereof to others,
- (3) handling of or performing post-mortem examinations on human bodies, or
- (4) service by any person as a member of a formal accreditation or similar professional board or committee of the named institution or as a person charged with the duty of executing directives of any such board or committee, and the Fund shall have the right and duty to defend any suit against the insured seeking damages, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and, with the written consent of the insured, such settlement of any claims or suit as it deems expedient, but the Fund shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Fund's liability has been exhausted by payment of judgments or settlements.

#### A. Exclusions—This insurance does not apply:

- (1) to bodily injury to the insured arising out of and in the course of his employment by the institution;
- (2) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law.

#### II. Persons Insured

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured;
- (b) executive officer or member of the board of trustees, directors or governors of the named institution while acting within the scope of his duties as such.

#### III. Limits of Liability

Regardless of the number of (1) insureds under this policy, the Fund's liability is limited as follows:

The limit of liability stated in the declarations as applicable to "each claim" is the limit of the Fund's liability for all damages because of each claim or suit covered hereby. The limit of liability stated in the declarations as "aggregate" is, subject to the above provision respecting "each claim", the total limit of the Fund's liability hereunder for all damages.

#### IV. Additional Conditions

First Aid Exclusion. The insurance shall not apply to expenses incurred by the insured for first aid at the time of an accident. The "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition is amended accordingly.

DIVISION OF GENERAL SERVICES

By \_\_\_\_\_

Chief of Insurance

**19-415.5. Automobile Liability Certificates of Insurance.**

CERTIFICATE NO. \_\_\_\_\_



**State Budget and Control Board  
Division of General Services  
of the State of South Carolina**

**AUTOMOBILE LIABILITY**

**CERTIFICATE OF INSURANCE**

**ITEM I.** Names Insured — Employees including elective or appointive officers or members of the Board of Trustees, Directors or Commissioners of:

**ITEM II.** Certificate Period: From: To: ...

12 01 A. M. Standard Time at the address of the named Employee as stated herein.

**ITEM III.** This insurance applies only when the person or persons insured are operating vehicles in performance of, in connection with, or incidental to their duties. This insurance applies to all owned, non-owned, and hired vehicles.

**ITEM IV.** Limits of Liability:

Bodily Injury Liability:	\$15,000 each person
	\$30,000 each occurrence
Property Damage Liability:	\$ 5,000 each occurrence
Basic Economic Loss:	\$ 1,000 each person
Automobile Medical Payments:	\$ 500 each person
Uninsured Motorists — Statutory Limits	

**ITEM V.** Premium Computation:

Provisional Rate Per Vehicle	Number of Insured Vehicles	Advance Premium
\$		\$

**ITEM VI.** The rights and liabilities of the parties insured will be governed by the terms and conditions of the original policy which may be amended by subsequent endorsements. The certificate of insurance neither affirmatively nor negatively extends, alters or extends the coverage afforded by Policy CLADGT11. In the event of any material change in, or cancellation of, the policy within 90 days notice will be provided to the Employer to whom this certificate has been issued.

IN WITNESS WHEREOF The State Budget and Control Board of the State of South Carolina, through the Division of General Services executed and attested these presents.

*F. S. McEachern, Jr.*  
F. S. McEachern, Jr.  
Division Director

DIVISION OF GENERAL SERVICES  
*[Signature]*  
By \_\_\_\_\_  
Chief of Insurance

**19-415.6. Insurance Reserve Fund.**

All hospitals which are insured by the State Budget and Control Board through the Insurance Reserve Fund under a General Liability or Professional Liability Insurance Policy shall develop and implement a program providing for risk management and loss prevention. The risk management program must be approved by the Insurance Reserve Fund prior to its implementation.

The Hospital Risk Management Program shall include:

- (a) A written plan for risk management,

- (b) Identification of a risk manager,
- (c) A committee of reference for risk management,
- (d) Education and training,
- (e) A system for reporting incidents to the State Insurance Reserve Fund including adverse effects of medical management, and
- (f) Participation in loss control educational programs and services sponsored by the State Insurance Reserve Fund.

**Editor's Note**

This regulation became effective May 11, 1979.

**19-445. CONSOLIDATED PROCUREMENT CODE.**

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

**Editor's Note**

2019 Act No. 41 (S.530), § 76, directed the State Fiscal Accountability Authority to publish interim regulations, which were published in SCSR43-8 Doc. No. 4895, effective August 23, 2019. Section 76 of 2019 Act No. 41 provides:

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

**Table of Contents**

- 19-445.2000. State Procurement Regulations.
- 19-445.2005. Internal Procurement Procedures; Procurement Records.
- 19-445.2010. Disclosure of Procurement Information.
- 19-445.2015. Unauthorized or Illegal Procurements.
- 19-445.2017. Pre solicitation Procedures.
- 19-445.2020. Certification.
- 19-445.2022. Temporary Suspension of Authority; Audit.
- 19-445.2025. Authority to Contract for Certain Services; Definitions.
- 19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.
- 19-445.2027. Electronic Commerce.
- 19-445.2040. The Official State Government Publication.
- 19-445.2042. Pre-Bid Conferences.
- 19-445.2045. Receipt, Safeguarding, and Disposition of Bids.
- 19-445.2050. Bid Opening.
- 19-445.2055. Bid Acceptance and Bid Evaluation.
- 19-445.2060. Repealed.
- 19-445.2065. Rejection of Bids.
- 19-445.2070. Rejection of Individual Bids.
- 19-445.2075. All or None Qualifications.
- 19-445.2077. Bid Samples and Descriptive Literature.
- 19-445.2080. Bid Reductions.
- 19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards.
- 19-445.2090. Award.
- 19-445.2095. Competitive Sealed Proposals.
- 19-445.2097. Rejection of Proposals.
- 19-445.2098. Rejection of Individual Proposals.
- 19-445.2099. Competitive Negotiations.
- 19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.
- 19-445.2105. Sole Source Procurements.
- 19-445.2110. Emergency Procurements.
- 19-445.2115. Information Technology Procurements.

- 19-445.2120. Cost or Pricing Data.
- 19-445.2122. Price Reasonableness.
- 19-445.2125. Responsibility of Bidders and Offerors.
- 19-445.2127. Organizational Conflicts of Interest.
- 19-445.2130. Prequalification of Supplies and Suppliers.
- 19-445.2132. Prequalification for a Single Solicitation.
- 19-445.2135. Conditions for Use of Multi-term Contracts.
- 19-445.2137. Food Service Contracts.
- 19-445.2140. Specifications.
- 19-445.2141. Commercial Products.
- 19-445.2143. Contract Clauses and Administration.
- 19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.
- 19-445.2150. Surplus Property Management.
- 19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
- 19-445.2155. Intergovernmental Relations.
- 19-445.2160. Assistance to Minority Businesses.
- 19-445.2165. Gifts
- 19-445.2180. Assignment, Novation, and Change of Name.
- 19-445.2200. Administrative Review Protective Orders.
- 19-445.3000. School District Procurement Codes; Model.

## **19-445.2000. State Procurement Regulations.**

### **A. General.**

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

### **B. Organizational Authority.**

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

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

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

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

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

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-1230 and 11-35-5340 of the Procurement Code.

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

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

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

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

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

#### C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of the governmental body's authority under Section 11-35-1210, except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

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

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

(4) "Responsible procurement officer" means the individual employed by either the purchasing agency or the chief procurement officers, as applicable, assigned to serve as the procurement officer, as defined in Section 11-35-310, and responsible for administering the procurement process. Typically, the responsible procurement officer will be identified by name in the solicitation, as amended, and any subsequent contracts, as amended.

#### D. Duty to Report Violations

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

#### E. Application of the Procurement Code.

(1) Other Required Approvals. Approval pursuant to the Code or regulations does not substitute for any other approval required by law. For example, if the Procurement Code applies to an acquisition and the overall arrangement involves either construction or the granting or acquiring any interest in real property, other independent processes or approval may be required by law, e.g., Sections 1-11-55, 1-11-56, 1-11-58, 1-11-65, or Chapter 47 of Title 2.

(2) Multiple Instruments Not Determinative. The application of the Code does not depend on whether the parties memorialize the overall transaction into one or more contractual instruments. As a remedial statute, the Consolidated Procurement Code should be construed liberally to carry out its purposes. (Section 11-35-20) Accordingly, when multiple written agreements are part of an overall transaction to accomplish an overall purpose, the documents will be considered together for purposes of determining whether the Consolidated Procurement Code applies, even if the instruments have not been executed simultaneously or the parties are not the same.

(3) Revenue generating contracts. The Consolidated Procurement Code "applies to every procurement . . . by this State under contract acting through a governmental body . . ." (Section 11-35-40(2)) "The term 'contract' means "all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . supplies, services, information technology, or construction." (Section

11-35-310(8)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added.) Accordingly, the Procurement Code applies even though the governmental body does not make a payment of money. Without limitation, examples of such contracts include revenue-generating contracts, concession agreements, and contracts structured as a design-build-finance-operate-maintain project. (Section 11-35-2910(8))

(4) **Financed Construction.** The Consolidated Procurement Code “applies to every procurement . . . by this State under contract acting through a governmental body . . .” (Section 11-35-40(2)) The term “contract” means “all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . construction.” (Section 11-35-310(18)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added)) The term “construction” is defined as “the process of building . . . any . . . public improvements of any kind to real property.” (Section 11-35-310(7)) Read together, and absent an applicable exclusion (e.g., gifts) or exemption (e.g., Section 11-35-710), the Procurement Code applies to every acquisition of the process of improving real property by a governmental body, whether or not the acquisition involves an expenditure of money. Such acquisitions may be memorialized in a number of related agreements and, without limitation, may be structured as an in-kind exchange, lease-purchase, lease with purchase option, lease-lease-back, sale-lease-back, installment-purchase, or so-called public-private-partnership.

(5) **Acquisition involving an interest in real property.** Generally, the Procurement Code does not apply to an acquisition solely of an interest in real property. For example, the Procurement Code does not apply to an acquisition of land, even though it includes pre-existing improvements and fixtures (i.e., not built-to-suit), nor does it apply to an acquisition of a leasehold estate, even though it includes complementary subordinate supplies, services, information technology, or construction (e.g., landlord-performed tenant improvements for a lease not-to-own, building security, janitorial services). In contrast, the Procurement Code does apply to an acquisition of an interest in real property if the transaction also involves a substantial acquisition of supplies, services, information technology, or construction. For example, and without limitation, the Procurement Code would apply to an acquisition of food services, even though it involved the agency leasing its land to the contractor. As another example, as discussed in R.19-445.2000E(4), a lease-purchase of custom-built, new construction must be acquired pursuant to the Procurement Code. While not necessarily conclusive, the primary objective of the transaction may be determinative.

#### F. Notice.

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

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

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

## **19-445.2005. Internal Procurement Procedures; Procurement Records.**

### A. Procedures Manual.

All governmental bodies shall develop and maintain an internal procurement procedures manual and forward a copy, and any revisions, of such to the Materials Management Officer. Upon receipt of the respective governmental body’s internal procurement procedures manual, the Materials Management Office shall be responsible for the following review:

(1) Determine that written internal operations procedures as submitted (a) are consistent with the South Carolina Consolidated Procurement Code and Regulations, (b) are consistent with any policies or procedures published by the chief procurement officers for their respective areas of responsibility, and (c) establish a clear means by which vendors can identify the governmental body's procurement officers and the limits of their authority.

(2) Notify the governmental body of its findings in writing.

B. Procurement Records.

Each governmental body must maintain procurement files sufficient to satisfy the requirements of external audit.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007.**

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

A. Reserved.

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

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

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

E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release to any individual information obtained in response to an RFP, without first obtaining from that individual a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of such information. Such agreements are binding and enforceable. Before allowing any individual to perform any role in discussions, negotiations, evaluation, or the source selection decision in a procurement conducted pursuant to Section 11-35-1530 or Section 11-35-1535, the responsible procurement officer must obtain from that individual, in a form approved by the appropriate chief procurement officer, a written acknowledgement of compliance and an agreement to comply with rules designed to protect the integrity of the procurement process.

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

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

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



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

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008; SCSR 43–8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44–6 Doc. No. 4894, eff June 26, 2020.

**Editor's Note**

A previous R. 19–445.2010, entitled "Exemptions", was repealed by State Register Volume 19, Issue No. 2, eff February 24, 1995.

## **19–445.2015. Unauthorized or Illegal Procurements.**

### A. Decision to Ratify or Declare Void

(1) Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations, the appropriate official, as defined in section G below, must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void. If ratified, the contract may be continued or terminated. The contract may be ratified only if ratification is in the interest of the State.

(2) The factors pertinent in determining the State's interest include, but are not limited to: (a) the seriousness of the procurement deficiency; (b) the degree of prejudice to the integrity of the competitive procurement system; (c) the good faith of the public officials and contractors involved; (d) the extent of performance; (e) the costs to the State in either terminating the contract or declaring it null and void, if any; (f) the urgency of the acquisition; and (g) the impact on the using agency's mission.

B. Decision to Continue or Terminate Contract. If a contract is ratified, the appropriate official must decide to either (1) continue the contract, or (2) terminate the contract and proceed as provided in section C below. A contract award or modification that is in violation of the Consolidated Procurement Code or these regulations may be continued only if the appropriate official determines an urgent and compelling need exists that cannot otherwise be met without undue burden on the State. If no such urgent and compelling need exists, the ratified contract must be terminated and the State shall proceed as provided in section C below. A contract that was ratified solely because a person lacking actual authority made an unauthorized award or modification, as described in item A(1)(a) above, does not require an urgent and compelling need to support its continuation.

C. Settlement of Terminated Contracts. If a contract is terminated as allowed by this regulation, the State shall, as appropriate and by agreement with the supplier, return any supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a contract is terminated and a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Profit shall be proportionate only to the performance completed up to the time of termination and shall be based on projected gain or loss on the contract as though performance were completed. Anticipated profits are not allowed.

D. Settlement of Void Contracts. If a contract is acknowledged as null and void pursuant to section A above, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed, and no further payments shall be made under the contract. In addition, the State is entitled to recover the greater of (1) the difference between payments made under the contract and the contractor's actual costs up until the contract was declared null and void, or (2) the difference between payments under the contract and the value to the State of the supplies, services, information technology, or construction it obtained under the contract.

E. Bad Faith. Notwithstanding section D above, the State is entitled to recover all amounts paid if the appropriate official determines that the recipient of the contract acted in bad faith. Bad faith shall not be assumed. Without limitation, specific findings showing deception, dishonesty, reckless disregard of clearly applicable laws or regulations, or deliberate breach of contract scope limits, support a finding of bad faith.

F. State's Remedies Not Limited. Regardless of its ratification of a contract, the State shall be entitled to any damages it can prove under any theory including but not limited to contract and tort.

G. Appropriate Official. The appropriate official to make the decisions authorized by sections A, B, and E above, or the determination addressed in item H(2) below, is the chief procurement officer, the head of a purchasing agency, or, for a contract with a total potential value no greater than \$100,000, a designee of either officer, above the level of the person responsible for the person committing or authorizing the act. If a contract award or modification is made in violation of the Consolidated Procurement Code or these regulations, and the value of the contract exceeds the certification of the purchasing agency or one hundred thousand dollars, the chief procurement officer must concur in the written determination before any further action is taken, unless the contract is declared null and void. In all circumstances, the chief procurement officer must concur in any determination finding bad faith.

H. Determinations.

(1) All decisions authorized by sections A, B, and E above shall be supported by a written determination of appropriateness conforming to the requirements of Section 11-35-210.

(2) The written determination must include the facts and circumstances surrounding the improper act, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the act.

(3) In most circumstances, the decisions authorized by sections A, B, and E above are unnecessary for a contract that has been completely performed. Accordingly, the determination in those instances maybe limited to the information required by subsection H(2).

I. Reporting. Every quarter, each governmental body shall submit to the Materials Management Officer a record listing all contract awards or modifications discovered as described in item A(1) above, along with copies of the applicable written determinations. The Materials Management Officer shall submit a copy of the record to the board on an annual basis and such record shall be available for public inspection.

J. Miscellaneous.

(1) In the context of an administrative review conducted under Article 17, sections G, H, and I above are inapplicable, and the appropriate official to make the decision authorized by sections A, B, and E is the chief procurement officer or Procurement Review Panel, as applicable.

(2) This Regulation does not apply to a determination pursuant to R.19-445.2085C.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020.**

**Editor's Note**

This Regulation 19-445.2015 applies only to solicitations issued after the first Monday in September, 2007. Any subsequent changes to this Regulation 19-445.2015 shall apply only to contracts awarded after the first Monday in September following the legislative session during which they are approved.

**19-445.2017. Pre-solicitation Procedures.**

A. General.

(1) This regulation prescribes best practices for pre-solicitation activities in acquisitions of supplies, services, or information technology, including acquisition planning, market research, and exchanges with industry. Nothing in section A, B, or C of this regulation shall provide an independent basis for administrative review pursuant to Article 17.

(2) Using agencies shall perform acquisition planning and conduct market research for all acquisitions of supplies, services, or information technology. The extent of planning and research will vary, depending on such factors as estimated dollar value, complexity, and past experience, as well as the nature of the supplies, services or information technology to be acquired.

(3) Except for procurements conducted pursuant to Section 11-35-1550, no solicitation for offers shall proceed until the using agency has certified in writing that it has complied with this regulation. If the using agency lacks authority to conduct the procurement, the using agency shall provide the responsible procurement officer the opportunity to fully participate in all aspects of any pre-solicitation activities conducted by the using agency.

(4) The using agency must document its acquisition planning and market research in sufficient detail to satisfy the requirements of an audit. This documentation shall be made a part of the procurement file.

(5) The appropriate chief procurement officer or his designee may require the using agency to conduct additional market research or provide additional documentation of the using agency's planning and research activities.

(6) The chief procurement officers shall provide guidance which shall be followed by all agencies conducting acquisition planning and market research, including considerations pertinent to determining the adequacy of planning and research activities.

#### B. Acquisition Planning.

(1) The purpose of acquisition planning is to ensure that the using agency meets its needs in the most effective, economical, and timely manner. The planning should promote and provide for:

- (a) Clearly defining the agency's needs;
- (b) Acquisition of commercially available items to the maximum extent practicable;
- (c) Full and open competition to the maximum extent practicable, with due regard to the nature of the supplies, services, or information technology to be acquired;
- (d) Selection of appropriate source selection method and contract type; and
- (e) Appropriate consideration of the use of term contracts to fulfill the requirement, before awarding new contracts.

(2) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of when contract award or order placement is necessary. Agency staff should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally impedes advantageous outcomes, restricts competition, and increases prices.

(3) Acquisition planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. If and as commensurate with the value and complexity of the acquisition, the agency shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as procurement, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area, the agency should also consider including operations staff or "end users," as appropriate.

#### C. Market Research.

(1) Acquisitions begin with a description of the agency's needs stated in terms sufficient to allow conduct of market research. Using agencies shall conduct market research appropriate to the circumstances to arrive at the most suitable approach to acquiring supplies, services, and information technology. Agencies should conduct market research when planning a new acquisition, or for a new type of supplies, services, or information technology; before requisitioning an acquisition, or requesting delegated authority to conduct an acquisition in excess of the agency's certification; and on an ongoing basis (to the maximum extent practicable), to effectively identify the capabilities of small businesses, new entrants into government contracting, and new commercially available items, for meeting the agency's requirements.

(2) Agencies should use the results of market research to determine if sources capable of satisfying the agency's requirements exist; determine if commercially available items exist that meet the agency's requirements; and determine the practices of firms engaged in producing, distributing, and supporting the supplies, services or information technology to be acquired, such as type of contract, type and relationship of businesses involved in such contracts (e.g., subcontractors, suppliers, distributors, integrators) and, common industry contract terms or specifications, including without limitation, terms for contract duration, payment, warranties, maintenance and packaging, marking, and any other contract terms relevant to the proposed acquisition.

D. Exchanges with industry before receipt of proposals.

(1) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with Regulation 19-445.2010, Disclosure of Procurement Information. Interested parties include potential offerors, end users, agency acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. The purpose of exchanging information is to improve the understanding of agency requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the State's requirements, and enhancing the State's ability to obtain quality supplies, services, information technology, and construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(2) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, responsible procurement officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria; the availability of reference documents; and any other industry concerns or questions.

(3) Techniques to promote early exchanges of information include industry conferences; public hearings; market research, as described in section C above; presolicitation notices; draft RFPs; requests for information (RFIs); presolicitation conferences; and site visits. They may also include one-on-one meetings with potential offerors. In conducting exchanges, agencies should take measures to comply with Chapter 13, Title 8 of the South Carolina Code (Ethics, Government Accountability and Campaign Reform Act); R.19-445.2010 (Disclosure of Procurement Information); R.19-445.2127 (Organizational Conflicts of Interest); and R.19-445.2165 (Gifts). However, any such meetings that are substantially involved with potential specifications or contract terms and conditions must comply with the restrictions on disclosure of information in subsection D(6) below.

(4) To encourage industry response, a using agency may publish notice of its plans to conduct presolicitation exchanges in South Carolina Business Opportunities and other publications likely to reach potential offerors.

(5) RFIs may be used when the agency does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the agency to form a binding contract. There is no required format for RFIs.

(6) General information about agency mission needs and future requirements may be disclosed at any time. In addition to the controls in R.19-445.2010, the responsible procurement officer must control any exchange with potential offerors after release of the solicitation. When specific information about a proposed acquisition that would be necessary or advantageous for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. When conducting a presolicitation conference, materials distributed at the conference should be made available to all potential offerors, upon request.

**HISTORY:** Added by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

## **19-445.2020. Certification.**

A. Review Procedures.

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

(a) Supplies and services;

(b) Reserved;

(c) Construction, including, subject to Section 11-35-3220(9), construction-related professional services;

(d) Information technology.

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

(a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;

(b) Procurement staff and training;

(c) Adequate audit trails and purchase order register;

(d) Evidences of competition;

(e) Small purchase provisions and purchase order confirmation;

(f) Emergency and sole source procurements;

(g) Source selections;

(h) File documentation of procurements;

(i) Decisions and determinations made pursuant to section 2015;

(j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;

(k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;

(l) Contract administration;

(m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

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

#### B. Approval

(1)(a) Upon recommendation by the Materials Management Officer, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(a) and A(1)(d), not under term contracts, in an amount up to one hundred fifty thousand dollars, provided a report required by item A(2) has been prepared within two years preceding the request.

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

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

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

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

(a) The name of the governmental body;

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

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

D. Limitations.

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

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2022. Temporary Suspension of Authority; Audit.**

A. Suspension of Authority.

Within his area of authority, the appropriate chief procurement officer may temporarily suspend a governmental body's power to conduct all, any type of, or any value of procurements if the chief procurement officer concludes that the governmental body either (1) lacks adequate internal controls to ensure compliance with the procurement laws, (2) lacks qualified or adequate staff, or (3) has otherwise acted in a manner that, in the opinion of the chief procurement officer, warrants a temporary loss of authority. The chief procurement officer may make continued suspension contingent upon corrective action, e.g., retain additional staff, training, revised internal controls. The suspension is effective upon delivery of written notice to the head of the purchasing agency. The written notice shall state the duration of the temporary suspension, which may not extend beyond the next regularly scheduled audit to be conducted pursuant to Section 11-35-1320. A chief procurement officer may not limit direct agency procurements below \$25,000.00. Before issuing a suspension pursuant to this paragraph, a chief procurement officer shall consult with the other chief procurement officers.

B. Audit.

In order to monitor the implementation of the procurement process, the appropriate chief procurement officer has the authority to audit any governmental body regarding one or more procurement activities.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.

### **19-445.2025. Authority to Contract for Certain Services; Definitions.**

A. Consultant Services.

(1) For the purposes of these Regulations, consultant services shall be defined as follows: An individual, partnership, corporation or any other legally established organization performing consulting services for or providing consulting advice to the State of South Carolina, or any governmental body thereof, over whom the State or governmental body has the right of control as to the result to be accomplished but not as to the details and means by which that result is to be accomplished.

(2) Services which fall within this definition shall be procured in accordance with the Code and these Regulations.

B. Employee Services.

(1) For the purposes of these Regulations, employee services shall be defined as follows: An individual performing services directly for the State of South Carolina, or any governmental body thereof, over whom the State or governmental body has the right of control not only as to the result to be accomplished by the work but also as to the details and means by which that work is to be accomplished.

(2) Services which fall within this definition shall be procured in accordance with State personnel policies and procedures.

C. Employment Services.

(1) For the purposes of these Regulations, employment services shall be defined as follows: An individual performing services indirectly for the State of South Carolina, or any governmental body thereof, whose services are obtained through a private employment agency. The employee employer relationship exists between the private employment agency and its employee. The State, or any governmental body, will contract with the private employment agency for the services of its employees.

(2) Services which fall within this definition shall be procured in accordance with the Code and these Regulations.

D. Legal Services.

Prior to the award of any state contract for the services of attorneys, approval for such services shall be obtained by the governmental body from the State Attorney General.

E. Auditing Services.

Prior to the award of any state contract for auditing or accounting services, approval for such services shall be obtained by the governmental body from the State Auditor.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 31, Issue No. 5, eff May 25, 2007.**

**19-445.2027. Electronic Commerce.**

A. "Electronic commerce" means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

B. General.

(1) The State may use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., "copy," "document," "page," "printed," "sealed envelope," and "stamped") shall not be interpreted to restrict the use of electronic commerce. The responsible procurement officer may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the Consolidated Procurement Code (e.g., transmit hard copy of drawings).

(2) Agencies may exercise broad discretion in selecting the information technology that will be used in conducting electronic commerce. However, the head of each agency shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce-

(a) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(b) Are implemented only after considering the full or partial use of existing infrastructures;

(c) Facilitate access to State acquisition opportunities by as many persons as practicable, including small businesses, minority business enterprises, and socially and economically disadvantaged small businesses;

(d) Include a means of providing widespread public notice of acquisition opportunities and a means of responding to notices or solicitations electronically;

(e) Comply with applicable standards that broaden interoperability and ease the electronic interchange of information; and

(f) Are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(3) Agencies using the procurement functionality of the South Carolina Enterprise Information System are deemed to have complied with subsection (B)(2) of this regulation.

(4) Consistent with provisions of the Uniform Electronic Transactions Act, Sections 26-6-10, et seq., agencies may accept electronic signatures and records in connection with State contracts.

C. Submission of Offers by Electronic Commerce. Subject to all other applicable regulations (e.g., R.19-445.2045 and -2050), the responsible procurement officer may authorize use of electronic

commerce for submission of bids and proposals. If electronic submissions are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use. Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

**HISTORY:** Added by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

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

A. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) Instructions to bidders on how to visibly mark information which they consider to be exempt from public disclosure.

B. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. Accordingly, bidding time will be set to provide bidders a reasonable time to prepare their bids. Without limiting the foregoing requirements, the date of opening may not be less than seven (7) days after notice of the solicitation is provided as required by Section 11-35-1520(3), unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer or the head of the purchasing agency or his designee.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2040. The Official State Government Publication.**

The name of the official state government publication shall be known as the "South Carolina Business Opportunities." It shall be published by the Materials Management Office at least weekly. The purpose is to provide a listing of proposed procurements of construction, information technology, supplies, services and other procurement information of interest to the business community. Except as otherwise provided by law, the publication will be available to all interested parties by posting on a public-facing Internet site. Contents shall be limited to inclusion of proposed procurements required by regulations and such other business information as approved by the Materials Management Officer. Publication of proposed procurements of a classified nature or emergencies may be excluded from publication.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2042. Pre-Bid Conferences.**

A. Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

B. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.

C. Pre-bid conferences may not be made mandatory absent a written determination by the head of the governmental body or his designee that the unique nature of the procurement justifies a



mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition.

D. To minimize the time and expense imposed on industry by pre-bid conferences, the procurement officer should arrange for attendance by electronic means to the maximum extent practicable.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

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

#### A. Procedures Prior to Bid Opening.

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

#### B. Unidentified Bids.

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

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2050. Bid Opening.**

#### A. Procedures.

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. In the presence of one or more state witnesses, he shall then personally and publicly open all bids received prior to that time, and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated and certified in writing as true and accurate by both the person opening the bids and the witness. The tabulation shall be open to public inspection.

B. If it becomes necessary to postpone a bid opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening. When the purchasing agency is closed due to force majeure, bid opening will be postponed to the same time on the next official business day.

#### C. Disclosure of Bid Information.

Only the information disclosed by the procurement officer of the governmental body or his designee at bid opening is considered to be public information under the Freedom of Information Act, Chapter 4 of Title 30, until after the issuance of an award or notification of intent to award, whichever is earlier.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007.

### **19-445.2055. Bid Acceptance and Bid Evaluation.**

When necessary for the best interest of the State, bid criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982.

### **19-445.2060. Repealed.**

**HISTORY:** Former Regulation, titled **Telegraphic Bids**, had the following history: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007. Repealed by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2065. Rejection of Bids.**

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

B. Cancellation of Bids Prior to Award.

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

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

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

C. Extension of Bid Acceptance Period.

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

## **19-445.2070. Rejection of Individual Bids.**

### **A. General Application.**

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

### **B. Alternate Bids.**

Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

### **D. Modification of Requirements by Bidder.**

(1) Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:

(a) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the State cannot be determined;

(b) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"

(c) states a price but qualified such price as being subject to "price in effect at time of delivery;"

(d) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;

(e) requires the State to determine that the bidder's product meets state specifications; or

(f) limits the rights of the State under any contract clause.

(2) Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

### **E. Price Unreasonableness.**

Any bid may be rejected if the responsible procurement officer determines in writing that it is unreasonable as to price.

### **F. Bid Security Requirement.**

When a bid security is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.

### **G. Exceptions to Rejection Procedures.**

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

## **19-445.2075. All or None Qualifications.**

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none"

qualifications after bid opening since such qualification is substantive and affects the rights of the other bidders.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982.

### **19-445.2077. Bid Samples and Descriptive Literature.**

A. "Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the State to consider whether the item meets its needs.

B. "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

C. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

D. The Invitation for Bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the Invitation for Bids.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.

### **19-445.2080. Bid Reductions.**

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

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

#### **Editor's Note**

A previous R. 19-445.2080, entitled "Minor Informalities and Irregularities in Bids", was repealed by State Register Volume 19, Issue No. 2, eff February 24, 1995

### **19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards.**

A. General Procedure.

(1) A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency, or the designee of either.

(2) Confirmation of Bid. When the responsible procurement officer knows or has reason to conclude that a mistake may have been made, she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. Consistent with R.19-445.2010, -2050C, and -2095C, the responsible procurement officer should only disclose information that is publicly available when confirming a bid. If the bidder asserts a mistake, the bid may be corrected or withdrawn only if allowed by regulation (e.g., R.19-445.2085A and B and R.19-445.20951(2)(d)).

B. Correction Creates Low Bid.

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

C. Cancellation Of Award Prior To Performance.

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;

- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2090. Award.**

#### A. Application.

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

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

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

#### A. Request for Proposals.

The provisions of Regulations 19-445.2030B and 19-445.2040 shall apply to implement the requirements of Section 11-35-1530 (2), Public Notice.

#### B. Receipt, Safeguarding, and Disposition of Proposals.

The provisions of Regulation 19-445.2045 shall apply to competitive sealed proposals.

#### C. Receipt of Proposals.

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

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

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

#### D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

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

F. Specified Types of Construction.

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

G. Procedures for Competitive Sealed Proposals.

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

H. Other Applicable Provisions.

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

- (1) Regulation 19-445.2042, Pre-Bid Conferences,
- (2) Regulation 19-445.2060, Telegraphic and Electronic Bids,
- (3) Regulation 19-445.2075, All or None Qualifications,
- (4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
- (5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

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

- (a) acceptable (i.e., reasonably susceptible of being selected for award);
- (b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or
- (c) unacceptable.

(2) Conduct of Discussions.

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

- (a) Control all exchanges;
  - (b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;
  - (c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;
  - (d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.
  - (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.
- (3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.
- (4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

J. Rejection of Individual Proposals.

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

(a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;

(b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or

(c) the proposed price is clearly unreasonable.

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

K. Negotiations.

(1) Prior to initiating negotiations under Section 11-35-1530(8), the using agency must document its negotiation objectives.

(2) The responsible procurement officer must participate in, control, and document all negotiations.

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

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

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; State Register Volume 32, Issue No. 5, eff May 23, 2008; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

**19-445.2097. Rejection of Proposals.**

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

B. Cancellation of Solicitation Prior to Award.

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

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) specifications have been revised;

(c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

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

C. Extension of Bid Acceptance Period.

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

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2098. Rejection of Individual Proposals.**

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

B. Reasons for rejecting proposals include but are not limited to:

(1) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;

(2) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or

(3) the proposed price is unreasonable.

C. The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

D. Exceptions to Rejection Procedures.

Any proposal received after the procurement officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the proposal had been delivered to the location specified in the solicitation or the governmental body's mail room which services that location prior to the bid opening.

**HISTORY:** Added by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2099. Competitive Negotiations.**

A. General

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

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

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

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

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

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

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

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

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



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

#### B. Procedures for Competitive Negotiations.

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

#### C. Definitions

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

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

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

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

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

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

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

#### D. Amending the solicitation

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

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

(3) If a proposal of interest to the State involves a desirable departure from the stated requirements, the responsible procurement officer shall amend the solicitation, preferably prior to completion of proposal evaluation pursuant to F(1), provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see Regulation 19-445.20991).

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

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

#### E. Evaluation Factors

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

(2) Evaluation factors and significant subfactors must-

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

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

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

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

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

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

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

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

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

#### F. Evaluation Process

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

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

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

(4) Past performance evaluation.

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

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

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

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

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

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

G. Exchanges with offerors.

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

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

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

(4) Competitive Range.

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

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

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

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

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

H. Negotiations with offerors

(1) Negotiations - General.

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

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

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

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

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

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

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

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

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

(i) Section 11-35-30 (Obligation of Good Faith);

(ii) R.19-445.2099G(2) (Fairness and Impartiality); and

(iii) R.19-445.2099H(2) (Minimum Negotiations).

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

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

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

(2) Negotiations—Minimum—Problem Identification

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

(3) Negotiations—Enhancement.

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

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

(4) Proposal Revisions.

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

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

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

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

(1) Favors one offeror over another;

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

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

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

J. Tradeoff Process

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

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

K. Award

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

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

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

**HISTORY: Added by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim). Amended by SCSR 44-6 Doc. No. 4894, eff June 26, 2020.**

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

### **A. Authority.**

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

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

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

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

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

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

### **B. Purchases pursuant to Section 11-35-1550(2)(b) (Three Written Quotes).**

(1) If an agency does not receive responsive quotes from at least three responsible bidders, adequate public notice must be given and documented with the purchase requisition. So-called "no bids" are not bona fide and do not count as one of the three.

(2) Requests for quotes must be distributed equitably among qualified suppliers, unless adequate public notice is given in South Carolina Business Opportunities.

### **C. Purchases pursuant to Section 11-35-1550(2)(c) (Advertised Small Purchase) may be made by giving adequate public notice in South Carolina Business Opportunities and:**

(1) issuing a written solicitation for written quotes, as described in Section 11-35-1550(2)(c);

(2) soliciting bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) soliciting proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

**D. When conducting a small purchase over twenty-five thousand dollars for which adequate public notice is required, potential offerors must be provided reasonable time to prepare their bids, no less than seven (7) days after such notice is provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency, the appropriate chief procurement officer, or the designee of either.**

### **E. Establishment of Blanket Purchase Agreements.**

(1) **General.** A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) **Alternate Sources.** To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or information technology under such agreements.

(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

(a) Description of agreement. A statement that the supplier shall furnish supplies, services, or information technology, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

(b) Extent of obligation. A statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(c) Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.

(d) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (1) name of supplier;
- (2) blanket purchase agreement number;
- (3) date of call;
- (4) call number;
- (5) itemized list of supplies, services, or information technology furnished;
- (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
- (7) date of delivery or shipment.

(e) Invoices one of the following statements:

(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

#### F. Competition Under Blanket Purchase Agreement.

Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies, services, or information technology to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

#### G. Calls Against Blanket Purchase Agreement.

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

H. Receipt and Acceptance of Supplies or Services.

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

I. Review Procedures.

The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.**

**19-445.2105. Sole Source Procurements.**

A. Application.

The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

B. Exceptions.

Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) [Repealed]
- (4) [Repealed]
- (5) where the item is one of a kind; and
- (6) [Repealed]

C. Written Determination.

(1) The written determination to conduct a procurement as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials Management Officer.

(2) The written determination must include a purchase description that states the using agency's actual needs, which shall not be unduly restrictive. In cases of reasonable doubt, competition should be solicited. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision and must be accompanied by market research that supports the decision. The determination must be authorized prior to contract execution.

D. Notice.

(1) Compliance with the notice requirements in Section 11-35-1560(A) must be documented in the procurement file.

(2) The public notice required by Section 11-35-1560(A) must include the written determination required by Section C(2) above or instructions how to obtain the written determination immediately upon request.

E. Other Applicable Provisions.

Sole source procurements must comply with all applicable statutes and regulations, including without limitation, Sections 11-35-30 (Obligation of good faith), -210 (Determinations), -410 (Public access to procurement information), -1810 (Responsibility of bidders and offerors), -1830 (Cost or pricing data), -2010 (Types of contracts), -2030 (Multiterm contracts), -1610 (Change order or contract

modification), -2440 (Records of procurement actions), -2730 (Assuring competition), and -4230 (Authority to resolve contract and breach of contract controversies).

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2110. Emergency Procurements.**

#### A. Application.

The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

#### B. Definition.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of State government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

#### C. Limitations.

Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.

#### D. Conditions.

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement.

#### E. Selection of Method of Procurement.

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

#### F. Notice.

Compliance with the notice requirements in Section 11-35-1570(B) must be documented in the procurement file.

#### G. Written Determination.

The Chief Procurement Officer or the head of the purchasing agency or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2115. Information Technology Procurements.**

#### A. Reserved.

#### B. Reserved.

#### C. Software Licensing

Pursuant to Section 11-35-510, the Information Technology Management Officer may execute an agreement with a business on behalf of, and which binds all, governmental bodies in order to establish the terms and conditions upon which computer software may be licensed, directly or indirectly, from



that business by a governmental body. Such an agreement may provide for the voluntary participation of any other South Carolina public procurement unit. Such agreements do not excuse any governmental body from complying with any applicable requirements of the Procurement Code and these Regulations, including the requirements of Section 11-35-1510.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

## **19-445.2120. Cost or Pricing Data.**

### A. Definitions

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited, at least two responsive and responsible offerors independently compete for a contract, and price is a substantial factor in the evaluation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(2) Commercial product has the meaning stated in Section 11-35-1410(1).

(3) Established catalog price has the meaning stated in Section 11-35-1410.

(4) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(5) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

### B. Thresholds

(1) Section 11-35-1830(1)(a) applies where the total contract price exceeds five hundred thousand dollars.

(2) Section 11-35-1830(1)(b) applies where the pricing of any change order, contract modification, or termination settlement exceeds five hundred thousand dollars, unless the procurement officer determines in writing that such information is necessary to determine that the pricing is reasonable. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(3) Ordinarily, cost and pricing data should not be required for the acquisition of any item that meets the definition of commercial product, including any modification that does not change the item from a commercial product to a non-commercial product. The contractor may be required to submit cost or pricing data for commercial products or COTS only if the purchase or modification exceeds the thresholds established in this section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

### C. Conditions of Waiver

The requirements of Section 11-35-1830 may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

### D. Refusal to Submit Data

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### Editor's Note

A previous R. 19-445.2120, entitled "Lease and/or Rental of Office Space and Other Real Property", was repealed by State Register Volume 23, Issue No. 5, eff May 28, 1999.

### **19-445.2122. Price Reasonableness.**

A. General. The objective of offer analysis is to ensure that the final contract price is fair and reasonable. The procurement officer is responsible for evaluating the reasonableness of the offered prices. Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see subsection B(2)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. The analytical techniques and procedures described in this regulation may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. In addition, they should be used to analyze cost or pricing data required by Section 11-35-1830. The complexity and circumstances of each acquisition should determine the appropriate level of detail for the analysis. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies conducting offer analysis. The responsible procurement officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

B. Analytical techniques include, but are not limited to, the following:

(1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis criteria include but are not limited to: (a) price submissions of prospective bidders or offerors in the current procurement; (b) prior price quotations and contract prices charged by the bidder, offeror, or contractor; (c) prices published in catalogues or price lists; (d) prices available on the open market; and (e) in-house estimates of cost. The responsible procurement officer may use various price analysis techniques and procedures to ensure a fair and reasonable price.

(2) Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate: (a) specific elements of costs; (b) the necessity for certain costs; (c) the reasonableness of amounts estimated for the necessary costs; (d) the reasonableness of allowances for contingencies; (e) the basis used for allocation of indirect costs; (f) the appropriateness of allocations of particular indirect costs to the proposed contract; and (g) the reasonableness of the total cost or price. The responsible procurement officer may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition.

C. Unbalanced pricing. All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. If the responsible procurement officer determines that unbalanced pricing may increase performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices, she may conclude that the offer is unreasonable as to price.

**HISTORY:** Added by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2125. Responsibility of Bidders and Offerors.**

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

(1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the State; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

B. Obtaining Information; Duty of Contractor to Supply Information.

At any time prior to award, the prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor; knowledge of personnel within the using or purchasing agency; commercial sources of supplier information; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

D. Duty Concerning Responsibility.

(1) Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

(2) Consistent with Section 11-35-1529(3), the procurement officer must determine responsibility of bidders in competitive on-line bidding before bidding begins.

E. Written Determination of Nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

F. Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

G. Subcontractor responsibility.

(1) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the procurement officer's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(2) When it is in the state's interest to do so, the procurement officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the procurement officer to determine subcontractor responsibility.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.**

**19-445.2127. Organizational Conflicts of Interest.**

A. General.

(1) "Organizational conflict of interest" occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and
- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R.19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms "contractor" and "subcontractor" are defined by Section 11-35-310.

B. Providing systems engineering and technical direction. (1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

- (a) determining specifications or developing work statements,
- (b) determining parameters,
- (c) identifying and resolving interface problems,
- (d) developing test requirements,
- (e) evaluating test data,
- (f) supervising design,
- (g) directing other contractors' operations, and
- (h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C. Preparing specifications or work statements.

(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.

(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services-or provides material leading directly, predictably, and without delay to such a work statement-that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole

source under R.19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is not waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State's interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency's senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body's authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R.19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

**HISTORY:** Added by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim). Reserved by SCSR 44-4 Doc. No. 4861, eff April 24, 2020. Amended by SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

**Editor's Note**

Regulation 19-445.2127 applies only to solicitations issued after November 29, 2019.

### **19-445.2130. Prequalification of Supplies and Suppliers.**

A. Qualified Products Lists.

A qualified products list may be developed with the approval of the Chief Procurement Officer or the procurement officer of the governmental body authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements. The procedures for the inclusion of a product on the qualified products list ("QPL") must be available to prospective vendors for consideration of their product to the list.

B. Prospective suppliers may be prequalified, and distribution of the solicitation may be limited to prequalified suppliers. Suppliers who meet the prequalification standards at any time shall be added to the prequalified list for subsequent solicitations. The fact that a prospective supplier has been prequalified does not necessarily represent a finding of responsibility.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999.

### **19-445.2132. Prequalification for a Single Solicitation.**

A. Application.

The pre-qualification process shall not be used to unduly limit competition. Any mandatory minimum requirements shall comply with Section 11-35-2730. In a competitive bid, the pre-qualification

process is not intended to eliminate bidders capable of completing the work being procured. Before a request for qualifications may be issued pursuant to Section 11-35-1520(11) or 11-35-1530(4), the chief procurement officer or the head of a purchasing agency or either officer's designee shall prepare a written justification stating the necessity for pre-qualifying offerors. Prior to issuance of the solicitation, each potential offeror seeking qualification must be promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

**B. Receipt and Safeguarding of Responses.**

Prior to opening submittals received in response to a request for prequalification, the provisions of Regulation 19-445.2045 shall apply to the receipt and safeguarding of all such submittals received.

**HISTORY: Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.**

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

**A. General.**

A multi-term contract is a contract for the acquisition of supplies, services, or information technology for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew. A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services for a period in excess of one year, where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start up costs.

**B. Objective.**

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

**C. Exceptions.**

This Regulation 19-445.2135 applies only to contracts for supplies, services, or information technology and does not apply to contracts for construction.

**D. Conditions for Use.**

(1) A multi-term contract may be used if, prior to issuance of the solicitation, the Procurement Officer determines in writing that:

(a) Special production of definite quantities or the furnishing of long term services are required to meet state needs; or

(b) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(3) The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;

(4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and,

(7) that, in the event of cancellation as provided in (E) (3) of this subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offerer to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

G. Maximum Contract Periods

Every contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2137. Food Service Contracts.**

Any food service contracts entered into by any governmental body shall be solicited by the Materials Management Office under Code Section 11-35-1530, Competitive Sealed Proposals, and Regulation 19-445.2095. A review panel composed of one representative each from the governmental body, the Materials Management Office, and the Commission on Higher Education shall review such proposals and approve it prior to the issuance of an award or notification of intent to award, whichever is earlier.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.

### **19-445.2140. Specifications.**

A. Definitions.

(1) “Brand Name Specification” means a specification limited to one or more items by manufacturers’ names or catalogue number.

(2) “Brand Name or Equal Specification” means a specification which uses one or more manufacturer’s names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

(3) “Qualified Products List” means an approved list of supplies, services, information technology, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

(4) “Specification” means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, information technology, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms “specification” and “purchase description” are used interchangeably throughout the Regulations.

(5) “Specification for a Common or General Use Item” means a specification which has been developed and approved for repeated use in procurements.

#### B. Issuance of Specifications.

The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State’s needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State’s requirements. All specifications shall be written in a non restrictive manner as to describe the requirements to be met.

#### C. Use of Functional or Performance Descriptions.

(1) Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies, services, and information technology. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

##### (2) Brand Name or Equal Specifications.

(a) Brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

#### D. Preference for Commercially Available Products.

It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

## **19-445.2141. Commercial Products.**

#### A. Definitions.

(1) Commercial product has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

(2) Commercially available off-the-shelf product (“COTS”) has the meaning stated in Section 11-35-1410, and does not include printing or insurance.



B. General.

(1) Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements, and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R.19-445.2140D (Preference for commercially available products)).

(2) Consistent with Section 11-35-1535(A)(2), the competitive negotiations source selection method may not be used to acquire only commercially available off-the-shelf products.

C. Price reasonableness.

(1) An advantage of COTS is that a competitive market, evidenced by substantial commercial sales, helps to determine price reasonableness. Substantial sales of a COTS product may establish catalog prices (see Section 11-35-1410) and market prices. Market prices are current prices that are established in the usual and ordinary course of trade between buyers and sellers (see R.19-445.2120A(3)). A characteristic of both catalog prices and market prices is that they can be substantiated from sources independent of the offeror—for example, through market research.

(2) “Items customarily sold in bulk” means products that are loaded and carried in bulk without mark or count. COTS does not include bulk materials, like fuel and grain, because the prices for those items fluctuate, making it difficult or impossible to rely on short-term pricing to establish price reasonableness for purchase contracts that may be for a longer term.

D. Purchase description or specification.

The agency’s purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency’s specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency’s needs in these terms allows offerors to propose products that will best meet the State’s needs.

E. Simplified purchasing procedures for COTS.

(1) Section 11-35-1550(2)(b) authorizes the use of simplified procedures for the acquisition of supplies and information resources in amounts up to \$100,000, if the responsible procurement officer reasonably expects, based on the nature of the supplies or information resources sought, and on market research, that offers will include only COTS. The purpose of these simplified procedures is to vest procurement officers with additional procedural discretion and flexibility, so that COTS acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the State and industry (see R.19-445.2100).

(2) The procurement officer should be aware of customary commercial terms and conditions when pricing COTS. COTS prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller’s liability, quantities ordered, length of the performance period, and specific performance requirements. The procurement officer should review the using agency’s standard contract terms and conditions, along with commercial terms appropriate for the acquisition of the particular item. The procurement officer should consider avoiding terms inconsistent with commercial practice, unless those terms are required by law (see R.19-445.2143) or are essential to the using agency’s requirements.

(3) Section 11-35-2040 provides that COTS purchases made using any of the simplified procedures of Section 11-35-1550 are exempt from a number of statutory provisions that vendors have complained are overly burdensome. The procurement officer should consider Section 11-35-2040 and R.19-445.2143 when preparing the solicitation or written request for quotes.

(4) Regulation 19-445.2120B(3) prohibits requiring cost or pricing data when acquiring a commercial product, including COTS, unless the purchase or modification exceeds the thresholds established in that section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

F. The appropriate Chief Procurement Officer may develop and issue guidance, including solicitation forms, which may be used by agencies acquiring COTS using small purchase procedures.

**HISTORY:** Added by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim). Amended by SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

### **19-445.2143. Contract clauses and administration.**

A. Contracts formed pursuant to the Consolidated Procurement Code are deemed to incorporate all applicable provisions thereof and the ensuing regulations.

B. Prohibited Terms. Unless otherwise specifically provided by or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

(1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230)

(2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140)

(3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45.

(4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050)

(5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050)

C. A material change is a change order or contract modification that is beyond the general scope of the original contract, such that the subject of the modification should be competitively procured absent a valid sole-source justification. Material changes are inconsistent with the underlying purposes and policies of this code. The appropriate Chief Procurement Officer may develop and issue guidance and procedures for evaluating whether a change order or modification is material.

**HISTORY:** Added by SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim). Amended by SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

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

A. Definitions

(1) Designer, as used in these regulations, means a person who has been awarded, through the qualifications-based process set forth in Section 11-35-3220, a contract with the State for the design of any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(2) Builder, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State to construct (alter, repair, improve, or demolish) any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(3) Design-Builder, as used in these regulations, means a person who has been awarded a contract with the State for the design and construction of any infrastructure facility using the design-build project delivery method defined in Section 11-35-2910(7).

(4) DBO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, operation, and maintenance of any infrastructure facility using the design-build-operate-maintain project delivery method defined in Section 11-35-2910(9).

(5) DBFO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, finance, operation, and maintenance of any infrastructure facility using the design-build-finance-operate-maintain project delivery method defined in Section 11-35-2910(8).

(6) Guaranteed Maximum Price (GMP) means a price for all costs for the construction and completion of the project, or designated portion thereof, including all construction management services and all mobilization, general conditions, profit and overhead costs of any nature, and where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount.

(7) Independent Peer Reviewer means a person who has been awarded a contract with the State for an independent, contemporaneous, peer review of the design services provided to the State by a DBO or DBFO Producer. In the event the State does not elect to contract with the Independent Peer Reviewer proposed by the successful DBO or DBFO Producer, the Independent Peer Reviewer shall be selected as provided in Section 11-35-2910(11).

(8) Operator, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State for the routine operation, routine repair, and routine maintenance (Operation and Maintenance) of any infrastructure facility, as defined in Section 11-35-2910(13).

#### B. Choice of Project Delivery Method.

(1) This Subsection contains provisions applicable to the selection of the appropriate project delivery method for constructing infrastructure facilities, that is, the method of configuring and administering construction projects which is most advantageous to the State and will result in the most timely, economical, and otherwise successful completion of the infrastructure facility. The governmental body shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the State's needs. Before choosing the project delivery method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the State.

##### (2) Selecting An Appropriate Project Delivery Method.

In selecting an appropriate project delivery method for each of the State's Infrastructure Facilities, the governmental body should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all authorized project delivery methods, the comparative advantages and disadvantages of each, and how these methods may be appropriately configured and applied to fulfill State requirements. Additional factors to consider include:

(a) the extent to which the governmental body's design requirements for the Infrastructure Facility are known, stable, and established in writing;

(b) the extent to which qualified and experienced State personnel are available to the governmental body to provide the decision-making and administrative services required by the project delivery method selected;

(c) the extent to which decision-making and administrative services may be appropriately assigned to designers, builders, construction-managers at-risk, design-builders, DBO producers, DBFO producers, peer reviewers, or operators, as appropriate to the project delivery method;

(d) the extent to which outside consultants, including construction manager agent, may be able to assist the governmental body with decision-making and administrative contributions required by the project delivery method;

(e) the governmental body's projected cash flow for the Infrastructure Facility to be acquired (both sources and uses of the funds necessary to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle);

(f) the type of infrastructure facility or service to be acquired - for example, public buildings, schools, water distribution, wastewater collection, highway, bridge, or specialty structure, together with possible sources of funding for the infrastructure facility - for example, state or federal grants, state or federal loans, local tax appropriations, special purpose bonds, general obligation bonds, user fees, or tolls;

(g) the required delivery date of the infrastructure facility to be constructed;

(h) the location of the infrastructure facility to be constructed;

(i) the size, scope, complexity, and technological difficulty of the infrastructure facility to be constructed;

(j) the State's current and projected sources and uses of public funds that are currently generally available (and will be available in the future) to support operation, maintenance, repair, rehabilitation, replacement, and demolition of existing and planned infrastructure facilities;

(k) and, any other factors or considerations specified in the Manual for Planning of Execution of State Permanent Improvements, Part 11, or as otherwise requested by the State Engineer.

(3) Except for guaranteed energy, water, or wastewater savings contracts (Section 48-52-670), design-bid-build (acquired using competitive sealed bidding) is hereby designated as an appropriate project delivery method for any infrastructure facility and may be used by any governmental body without further project specific justification.

(4) Governmental Body Determination.

The head of the governmental body shall make a written determination that must be reviewed by the State Engineer. The determination shall describe the project delivery method (Section 11-35-3005), source selection method (Section 11-35-3015 and 11-35-1510), any additional procurement procedures (11-35-3023 and 11-35-3024(2)(c)), and types of performance security (Sections 11-35-3030 and 11-35-3037) selected and set forth the facts and considerations leading to those selections. This determination shall demonstrate either reliance on paragraph (3) above, or that the considerations identified in paragraphs (1) and (2) above, as well as the requirements and financing of the project, were all considered in making the selection. Any determination to use a project delivery method other than design-bid-build must explain why the use of design-bid-build is not practical or advantageous to the State. Any determination to use any of the additional procedures allowed by Section 11-35-3024(2)(c) must explain why the use of such procedures are in the best interests of the State. Any request to use the prequalification process in a design-bid-build procurement must be in writing and must set forth facts sufficient to support a finding that pre-qualification is appropriate and that the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances.

C. Bonds and Security.

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. Unless waived pursuant to Section 11-35-3030(2)(iii), the contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond for construction exceeding \$50,000 shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Where the agency requires a payment bond for construction of \$50,000 or less, the bond must be issued by a surety meeting the requirements of Section 29-6-270. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

D. Architect Engineer, Construction Management and Land Surveying Services Procurement.

(1) The Advertisement of Project Description

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Code Section 11-35-3220(2), Advertisement of Project Description.

(2) State Engineer's Office Review.

The Office of State Engineer will provide forms in the Manual for Planning and Execution of State Permanent Improvements Projects-Part II for use by governmental bodies in submitting a contract for approval pursuant to Section 11-35-3220(8) of the Code.

E. Contract Forms.

(1) Pursuant to Section 11-35-2010(2), the following contract forms shall be used as applicable, as amended by the State Engineer, and as provided in the Manual for Planning and Execution of State Permanent Improvements-Part II. Subject to the foregoing:

(a) If an agency conducts a competitive sealed bid to acquire construction independent of architect-engineer or construction management services, the governmental body may use a document in the form of AIA Document A701.

(b) If an agency acquires architect-engineer services independent of construction, the governmental body may use a document in the form of AIA Document B151.

(c) If an agency acquires construction independent of architect-engineer or construction management services, the governmental body may use documents in the form of AIA Document A101 and A201. Other contract forms may be used as are approved by the State Engineer.

(d) If an agency acquires architect-engineer services, construction management services, and construction on the same project, each under separate contract, the governmental body may use documents in the form of AIA Documents A101/CMa, A201/CMa, B141/CMa, and B801/CMa. This paragraph does not apply if an agency acquires both construction and construction management services from the same business under the same contract.

(2) With prior approval of the State Engineer, a governmental body may supplement the contract forms identified in paragraph (1), as they have been amended by the State Engineer.

(3) Paragraph (1) does not apply to a contract entered into pursuant to Sections 11-35-1530, 11-35-1550, 11-35-3230, or 11-35-3310.

(4) For any contract forms specified herein, the Manual for Planning and Execution of State Permanent Improvements-Part II shall specify the appropriate edition or, if applicable, replacement form.

(5) For any contract forms not specified herein or otherwise required by law, the Manual for Planning and Execution of State Permanent Improvements-Part II may, without limitation, require the use of any appropriate contract document, standard industry contract form, standard state amendments to such documents or forms, or publish state specific contract forms. Absent contrary instructions in the Manual, the governmental body may use a contract written for an individual project.

(6) Construction under Procurement Code Section 11-35-1550 and 11-35-1530 may be in a format and description of services approved by the State Engineer.

#### F. Manual for Planning and Execution of State Permanent Improvements Projects.

For the purpose of these Regulations and Code Section 11-35-3240, a manual of procedures to be followed by governmental bodies for planning and execution of state permanent improvement projects is prepared and furnished by the designated board office, and included in this regulation. Part II of this manual, covering the procurement of construction for the projects, will be the responsibility of the Office of the State Engineer.

#### G. Prequalifying Construction Bidders.

In accordance with Section 11-35-3023, the State Engineer's Office shall develop procedures for a prequalification process and shall include it in the Manual for Planning and Execution of State Permanent Improvements-Part II. The provisions of Regulation 19-445.2132 shall apply to implement Section 11-35-3023.

H. With regard to Section 11-35-3310, the State Engineer's Office will establish working procedures for indefinite quantity contracts for professional services, and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II. With regard to Section 11-35-3320, the State Engineer's Office will establish working procedures for task order contracts for construction services and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II.

#### I. Construction Procurement-The Invitation for Bids.

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Section 11-35-3020(a), Invitation for Bids. The provisions of Regulation 19-445.2090(B) shall not apply to implement the requirements of Code Section 11-35-3020.

#### J. Participation in Prior Reports or Studies.

(1) Before awarding a contract for a report or study that could subsequently be used in the creation of design requirements for an infrastructure facility or service, the procurement officer should address, to the extent practical, the contractor's ability to compete for follow-on work.

(2) Before issuing a request for proposals for an infrastructure facility or service, the procurement officer should take reasonable steps to determine if prior participation in a report or study could provide a firm with a substantial competitive advantage, and, if so, the procurement officer should take appropriate steps to eliminate or mitigate that advantage.

(3) In complying with items (1) and (2) above, the procurement officer shall consider the requirements of Section 11-35-3245 and the Manual for Planning and Execution of State Permanent Improvements, Part II.

**K. Additional Procedures for Design-Build; Design-Build-Operate-Maintain; and Design-Build-Finance-Operate-Maintain.**

(1) Content of Request for Proposals. Each request for proposals (RFP) issued by the State for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain services shall contain a cover sheet that: (a) confirms that design requirements are included in the RFP, (b) confirms that proposal development documents are solicited in each offeror's response to the RFP, and (c) states the governmental body's determination for that procurement (i) whether offerors must have been prequalified through a previous request for qualifications; (ii) whether the governmental body will select a short list of responsible offerors prior to discussions and evaluations (along with the number of proposals that will be short-listed); and (iii) whether the governmental body will pay stipends to unsuccessful offerors (along with the amount of such stipends and the terms under which stipends will be paid).

(2) Purpose of Design Requirements. The purpose and intent of including design requirements in the RFP is to provide prospective and actual offerors a common, and transparent, written description of the starting point for the competition and to provide the State with the benefit of having responses from competitors that meet the same RFP requirements. In order to be effective, the governmental body must first come to understand and then to communicate its basic requirements for the infrastructure facility to those who are considering whether they will participate in the procurement competition.

(3) Purpose of Requirement for Proposal Development Documents. The purpose and intent of including the requirement for submittal of proposal development documents in each RFP for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain is to provide actual offerors with a common, and transparent, written description of the finish point for the competition. To be responsive, each offeror must submit drawings and other design related documents that are sufficient to fix and describe the size and character of the infrastructure facility to be acquired, including price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements).

(4) Content of Request for Proposals: Evaluation Factors. Each request for proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain shall state the relative importance of (1) demonstrated compliance with the design requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements), and (6) other factors, if any by listing the required factors in descending order of importance (without numerical weighting), or by listing each factor along with a numerical weight to be associated with that factor in the governmental body's evaluation. Subfactors, if any, must be stated in the RFP and listed, pursuant to the requirements of this Regulation, either in descending order, or with numerical weighting assigned to each subfactor. The purpose and intent of disclosing the relative importance of factors (and subfactors) is to provide transparency to prospective and actual competitors from the date the RFP is first published.

(5) The Manual for Planning and Execution of State Permanent Improvement Projects - Part II must include guidelines for the proper drafting of design requirements, proposal development documents, and requests for proposals.

**L. Errors and Omissions Insurance.**

(1) For design services in design-bid-build procurements. A governmental body shall include in the solicitation such requirements as the procurement officer deems appropriate for errors and omissions insurance (commonly called "professional liability insurance" in trade usage) coverage of architectural and engineering services in the solicitation for design services in design-bid-build procurements.

(2) For design services to be provided as part of design-build procurements. A governmental body shall include in the solicitation for design-build such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build contracts in excess of \$25,000,000.

(3) For design services to be provided as part of design-build-operate-maintain and design-build-finance-operate-maintain procurements. A governmental body shall include in the solicitation for design-build-operate-maintain and design-build-finance-operate-maintain such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build-operate-maintain and design-build-finance-operate-maintain contracts in excess of \$25,000,000.

(4) For Construction Management (Agency) services. A governmental body shall include in the solicitation for construction management agency services such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage.

(5) Errors and omissions (or professional liability) insurance coverage for construction management services is typically not required when the governmental body is conducting a construction management at-risk procurement.

M. Other Security; Operations Period Performance Bonds.

(1) Purpose.

To assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services, the governmental body shall identify, in the solicitation, one or more of the other forms of security identified in Section 11-35-3037 that shall be furnished to the governmental body by the offerors (or bidders) in order to be considered to be responsive.

(2) Operations Period Performance Bonds.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to provide, and upon award of the contract, to maintain in effect an operations period performance bond that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in the amount of 100% of that portion of the contract price that includes the cost of such operation and maintenance services during the period covered by the bond. In those procurements in which the contract period for operation and maintenance is longer than 5 years, the procurement officer may accept an operations period performance bond of five years' duration, provided that such bond is renewable by the contractor every five (5) years during the contract, and provided further, that the contractor has made a firm contractual commitment to maintain such bond in full force and effect throughout the contract term.

(b) The operations period performance bond shall be delivered by the contractor to the governmental body at the same time the contract is executed. If a contractor fails to deliver the required bond, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, award of the contract shall be made to the next ranked bidder (or offeror), or the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) Operations period performance bond shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the bond amount.

(3) Letters of Credit to Cover Interruptions in Operation.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to post, and upon award of the contract shall post, and in each succeeding year adjust and maintain in place, an irrevocable letter of credit with a banking institution in this State that secures the timely,

faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the next 12 months.

(b) The letter of credit required under this Section shall be posted by the contractor at the same time the contract is executed, and thereafter, shall be annually adjusted in amount and maintained by the contractor. If an offeror or bidder fails to demonstrate in its offer that it is prepared to post the required letter of credit, the bid (or offer) shall be rejected, the bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror), as otherwise provided by these regulations. If the contractor fails to place and maintain the required letter of credit, the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) If required by the solicitation, letters of credit shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

(4) Guarantees.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, the contractor and affiliated organizations (including parent corporations) shall provide a written guarantee that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the contract period.

(b) The written guarantee required under this Section shall be submitted by each offeror at the time the proposal is submitted. If the contractor fails to submit the required guarantee, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror) as otherwise provided by these regulations.

(c) If required by the solicitation, guarantees shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

#### N. Construction Management At-Risk.

(1) Absent the approval required by Section 11-35-2010, a contract with a construction manager at-risk may not involve cost reimbursement.

(2) Prior to contracting for a GMP, all construction management services provided by a construction manager at-risk must be paid as a fee based on either a fixed rate, fixed amount, or fixed formula.

(3) As required by Section 11-35-3030(2)(a)(iv), construction may not commence until the bonding requirements of Section 11-35-3030(2)(a) have been satisfied. Subject to the foregoing, bonding may be provided and construction may commence for a designated portion of the construction.

(4) In a construction management at-risk project, construction may not commence for any portion of the construction until after the governmental body and the construction manager at risk contract for a fixed price or a GMP regarding that portion of the construction. Prior to executing a contract for a fixed price or a GMP, a governmental body shall comply with Section 11-35-1830 and Regulation 19-445.2120, if applicable. For purposes of Section 11-35-1830(3)(a), adequate price competition exists for all components of the construction work awarded by a construction manager at-risk on the basis of competitive bids.

(5) When seeking competitive sealed proposals in a construction management at-risk procurement, the solicitation shall include a preliminary budget, and if applicable, completed programming and the conceptual design. The solicitation shall request information concerning the prospective offeror's qualifications, experience, and ability to perform the requirements of the contract, including but not limited to, experience on projects of similar size and complexity, and history of on-time, on-budget, on-schedule construction. The offeror's proposed fee may be a factor in determining the award.

(6) After all preconstruction services and final construction drawings have been completed, or prior thereto upon written determination by the procurement officer, a governmental body must negotiate with and contract for a GMP with a construction manager at-risk. If negotiations are unsuccessful, the governmental body may issue an invitation for bids, as allowed by this code, for the remaining construction.



(7) A governmental body shall have the right at any time, and for three years following final payment, to audit the construction manager at-risk to disallow and to recover costs not properly charged to the project. Any costs incurred above the GMP shall be paid for by the construction manager at-risk.

(8) A construction manager at-risk may not self-perform any construction work for which subcontractor bids are invited, unless no acceptable bids are received or a subcontractor fails to perform. Ordinarily, the contract with a construction manager at-risk should require the construction manager at-risk to invite bids for all major components of the construction work. Section 11-35-4210 does not apply to any subcontractor bid process conducted by a construction manager at-risk.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 31, Issue No. 5, eff May 25, 2007; State Register Volume 32, Issue No. 5, eff May 23, 2008; SCSR 43-8 Doc. No. 4895, eff August 23, 2019 (interim); SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

## **19-445.2150. Surplus Property Management.**

(Statutory Authority: 1976 Code § 11-35-3810)

### A. Definition, Authority and Mission.

#### (1) Definition.

Surplus property is all State-owned supplies and equipment, not in actual public use, with remaining useful life and available for disposal. This definition and the ensuing regulations exclude the disposal of solid and hazardous wastes as defined by any federal, state or local statutes and regulations. Property so defined as solid or hazardous waste shall not be relocated, nor title assumed under the authority of these regulations.

#### (2) Authority.

The disposition of all surplus property shall be conducted by the General Service Division's Surplus Property Management Office (SPMO) at such places and in such manner determined most advantageous to the State, except as defined in Section 11-35-1580 of the Procurement Code. All government bodies must identify surplus items and declare them as such, and report them in writing to the SPMO within one hundred and eighty (180) days from the date they become surplus. The SPMO shall deposit the proceeds from such disposition, less expense of the disposition, in the State's General Fund unless a government body makes a written request to retain such proceeds, less cost of disposition, for the purchase of like kind property and the SPMO, or his designee, approves such request.

#### (3) Mission.

The primary mission of the Surplus Property Management Office shall be to receive, warehouse and dispose of the State's surplus property in the best interest of the State. The central warehousing of State surplus property will allow all State governmental bodies and other political subdivisions one location to acquire needed property.

The purpose of this program is to provide the following:

1. elimination of costs related to the warehousing, insurance and accounting systems necessary to fulfill an agency's surplus property responsibility,
2. maximization of proceeds by disposing of property as soon as possible after it becomes excess to an agency's needs,
3. establishment of priorities in the disposal process that encourage keeping assets in public use as long as possible,
4. conversion of unneeded fixed assets into available funds on a timely basis .

### B. Reporting and Relocation of Surplus Property.

#### (1) Reporting.

Within one hundred eighty (180) days from the date property becomes surplus, it must be reported to the SPMO on a turn-in document (TID) designed by the SPMO. The description, model or serial number, acquisition cost, date of purchase and agency ID number shall be listed for each item.

Upon receipt of the TID, the SPMO will screen the property to determine whether it is surplus or junk as defined in these regulations.

(2) Property Relocation.

Surplus property reported shall be scheduled for relocation to the SPMO, Boston Avenue, West Columbia; or, upon consultation and agreement with the generating governmental body, remain at the governmental body's site if deemed by the SPMO to be a more cost-effective method for disposal.

At such time as property is officially received by the SPMO, title will pass to the General Services' Division and shall be accounted for as described herein. Governmental bodies shall delete insurance coverage on such property. The SPMO shall carry sufficient insurance to ensure these assets are safeguarded against loss. Governmental bodies shall delete such property from their fixed asset records at this point of transfer.

Upon disposal of the property, the proceeds, less cost of disposition, will be returned to the authorized revenue center if so requested and authorized in accordance with these regulations.

If determined to be junk, disposal will be the responsibility of the generating governmental body in accordance with Section 11-35-4020 of the Procurement Code.

C. Transfer of Surplus Property to Governmental Bodies, Political Subdivisions, and Eligible Nonprofit Health or Education Institutions.

(1) Eligibility.

The SPMO's primary role shall be to relocate surplus property to eligible Donees which includes governmental bodies, political subdivisions and nonprofit health and educational institutions.

The term governmental bodies means any State government department, commission, council, board, bureau, committee, institution, college, university, technical school, legislative body, agency government corporation, or other establishment or official of the executive, judicial, or legislative branches of the State. The term political subdivisions includes counties, municipalities, school districts or public service or special purpose districts. The term eligible nonprofit health or educational institutions means tax-exempt entities, duly incorporated as such by the State. SPMO shall be responsible for determining an applicant's eligibility prior to any transfer of property.

The SPMO will maintain sufficient records to support the eligibility status of these entities.

(2) Determination of Sale Price.

The sale price for all items will be established by the Manager of Surplus Property or the Manager's designee. The Manager or the Manager's designee shall have the final authority to accept or reject bids received via public sale. The following categories and methods will be used:

(a) Vehicles: NADA loan value shall be used for the sale price. In certain instances, the most recent public sale figures and consultation with the generating governmental body shall be the basis for a sale price.

(b) Boats, motors, heavy equipment, farm equipment, airplanes and other items with an acquisition cost in excess of \$5,000: The sale price shall be set from the most recent public sale figures and/or any other method necessary to establish a reasonable value including consultation with the generating governmental body.

(c) Miscellaneous items with an acquisition cost of \$5,000 or less such as office furniture and machines, shop equipment, cafeteria equipment, etc.: A sale price will be assessed based on current market conditions.

(3) Terms and Conditions on Property Transferred from Warehouse.

For any purchases made under this subsection, the purchasing entity will certify that all items acquired will be for the sole benefit of the buying institution and that no personal use will be involved. This certification will be formalized by the agreement signed at the time eligibility is established. The following terms and conditions will be set forth therein:

(1) Property must be placed into public use within one (1) year of acquisition and remain in use one (1) year from the date placed into actual use.

(2) Property which becomes unusable may be disposed of prior to the one-year limitation with the approval of the SPMO.

A utilization visit may be made by authorized personnel of the SPMO. All vehicles and property with an acquisition cost in excess of \$5,000 require a utilization review during the twelve-month period from date of transfer to ensure the property is in public use.

(A) Any misuse of property will be reported in writing to the SPMO's Manager by the utilization staff of the SPMO. The SPMO Manager shall have the authority to suspend all further purchases until a determination can be made under Subsection B. If warranted, the matter shall be referred to the proper law enforcement authority for full investigation.

(B) Upon determination that misuse of property has occurred, purchasing privileges will be terminated and not restored until the buying governmental body, political subdivision, or nonprofit health or educational institution pays to the SPMO the fair market value of the item(s) misused or returns the misused property to the SPMO.

(4) Disposition Cycles for Surplus Property.

An appropriate cycle methodology as determined in the SPMO's sole discretion shall be used for the disposal process of surplus property. Governmental bodies, political subdivisions and nonprofit health and educational institutions, and any other qualifying donees will be given priority over the general public to acquire the property.

Special items and heavy equipment, will generally follow the same disposal procedures as other property. When vehicles are the items in question, they will be held for two weeks to allow State agencies purchasing priority. However, the SPMO shall have the authority to deviate from these procedures in circumstances where cost avoidance, space requirements, market conditions, accessibility and manpower are considerations. The SPMO must document that such procedure is advantageous to the State.

D. Public Sale of Surplus Property.

(1) Public Sale Cycle.

Upon completion of the Donee sales cycle, the remaining items shall be made available to the public. Donees and the general public may purchase in this period, but without priority. This period has no minimum or maximum length and is determined by warehouse space and scheduled incoming property. There will also be times when property will not be made available for a Public Cycle Sale.

(2) Final Disposition by Competitive Public Sale.

When surplus property is sold via the competitive sealed bid process, notification of such sale shall be given through a Notice of Sale to be posted at the SPMO at least fifteen (15) days prior to the bid opening date. The sale shall also be announced through advertisement in newspapers of general circulation, the South Carolina Business Opportunities publication and such electronic or other media as deemed appropriate by the SPMO. The Notice of Sale shall list the supplies or property offered for sale; designate the location and how property may be inspected; and state the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening. Bids shall be opened publicly.

Award shall be made in accordance with the provisions set forth in the Notice of Sale and to the highest responsive and responsible bidder provided that the price offered by such bidder is deemed reasonable by the SPMO or his designee. Where such price is not deemed reasonable, the bids may be rejected in whole, or in part, and the sale negotiated beginning with the highest bidder provided the negotiated sale price is higher than the highest responsive and responsible bid. In the event of a tie bid the award will be made in accordance with the tie bid procedure set forth in Section 11-35-1520(9) of the Consolidated Procurement Code.

Property may also be sold at a public auction by an experienced auctioneer. The Notice of Sale shall include, at a minimum, all terms and conditions of the sale and a statement clarifying the authority of the SPMO, or his designee, to reject any and all bids. These auctions will be advertised in a newspaper of general circulation or on the radio, or both.

(3) Other Means of Disposal.

Some types and classes of items can be sold or disposed of more economically by some other means of disposal including barter, appraisal, electric commerce and web based sales. In such cases, and also where the nature of the supply or unusual circumstances necessitate its sale to be restricted or controlled, the SPMO may employ such other means provided the SPMO makes a written determination that such procedure is advantageous to the State.

(4) Designation of Surplus Property.

Upon written determination by the SPMO that surplus property items are needed to comply with programs authorized by the legislature or by executive order of the governor exercising his statutory authority, the SPMO may designate surplus property items for disposal in order to comply with the program requirements. The SPMO will develop and implement internal guidelines and procedures for the disposal of surplus property items designated as necessary to comply with the program requirements established by the legislature or the governor.

E. Fee Schedule.

The State Surplus Property Management Program will operate solely from service charges retained from the sale of surplus property. The Board shall establish a fee schedule sufficient to fund all program costs and it shall be reviewed by the Board as required to ensure the adequacy and equity of the Program.

F. Inventory and Accounting Systems.

(1) Forms.

Turn-in documents designed by the SPMO shall be used by all governmental bodies for reporting surplus property to the SPMO. It shall be the responsibility of the generating governmental body to obtain these forms and to furnish all information required on the form. Items received by the SPMO shall be physically checked by the SPMO against the turn-in document and a signed receipt issued to the governmental body.

(2) Tagging.

Items received by the SPMO shall be assigned an inventory number and data including generating governmental body, description of property, quantity, original acquisition cost, and other relevant information entered into an automated inventory system. Inventory tags listing all necessary information shall be attached to each item.

(3) Display.

Items shall be displayed in locations with other like commodities to allow for easy viewing.

(4) Issuing property.

All items sold by the SPMO to governmental bodies, political subdivisions and nonprofit health or educational institutions shall be recorded on a Bill of Sale and all required information shall be listed on the document. The Bill of Sale must be signed by the signatory authority of the governmental body, political subdivision or nonprofit health or educational institution as defined in Subsection C, Item 1 of these regulations. At the time of sale, the eligible entity shall receive a copy of the Bill of Sale.

(5) Invoicing.

Invoices shall be generated and mailed to the acquiring agency. All cash and accounts receivable transaction records shall be properly maintained. All transfers of funds to various accounts will be performed in accordance with these regulations.

(6) Deletions.

Items shall be deleted from the SPMO's inventory simultaneously with the invoicing process or by written justification from the Surplus Property Management Officer or his designee.

(7) Property sold to the public shall be paid for in full at the time of purchase.

Transactions shall be documented by a Bill of Sale enumerating all conditions of the sale i.e., "as is, where is," etc. and must be signed by the purchaser. Personal checks with proper identification, certified checks, or money orders made payable to the State of South Carolina or cash or credit cards shall be accepted as a form of payment. A copy of the Bill of Sale shall be presented to the purchaser as a receipt.

G. Trade In Sales.

Governmental bodies may trade in personal property, whose original unit purchase price did not exceed \$5,000, the trade in value of which must be applied to the purchase of new items. When the original unit purchase price exceeds \$5,000, the governmental body shall refer the matter to the SPMO, or his designee, for disposition.

The SPMO, or his designee, shall have the authority to determine whether the property shall be traded in and the value applied to the purchase of new like items or classified as surplus and sold in accordance with the provisions of Section 11-35-3820 of the Procurement Code. When the original purchase price exceeds \$100,000, the SPMO, or his designee, shall make a written determination as to its reasonableness and document such trade-in transaction.

H. Definition of Junk.

Junk is State-owned supplies and equipment having no remaining useful life in public service and the cost to repair or to refurbish the property exceeds the value of like used equipment, or the cost of transporting the property for sale exceeds the likely recovery from a sale. Property that may be recycled is not considered junk. The classification of property as junk is at the sole discretion of the SPMO.

I. Unauthorized Disposal.

(1) The ratification of an act of unauthorized and/or improper disposal of State property by any persons without the requisite authority to do so by an appointment or delegation under the Procurement Code rests with the Surplus Property Management Officer.

(2) Corrective Action and Liability.

In all cases, the head of the disposing agency shall prepare a written determination describing the facts and circumstances surrounding the act, corrective action being taken to prevent recurrence, and action taken against the individual committing the act and shall report the matter in writing to the SPMO within ten (10) days after the determination.

J. Authority to Debar or Suspend.

The procedures and policies set forth in Section 11-35-4220 of the Procurement Code shall apply to the disposal of State property. The authority to debar a person from participation in the public sales of State-owned property shall rest with the Materials Management Officer.

**HISTORY:** Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 12, Issue No. 5, eff May 27, 1988; State Register Volume 14, Issue No. 5, eff May 25, 1990; State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; State Register Volume 32, Issue No. 5, eff May 23, 2008.

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

A. Justification. A governmental body proposing to enter into an agreement other than an outright purchase is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of the Procurement Code and these Regulations.

B. Procedures. Upon written justification by the procurement officer of the governmental body of such alternate method, the following procedures will be followed:

(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the Director of the Division of Procurement Services or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration.

(2) Installment purchases will require the governmental body to submit both a justification and purchase requisition to the appropriate chief procurement officer or his designee for processing.

(3) All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the State under the contract.

**HISTORY:** Added by State Register Volume 12, Issue No. 5, eff May 27, 1988. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007; SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.

## **19-445.2155. Intergovernmental Relations.**

### **A. Selective Mandatory Opting.**

As provided in the solicitation, local political subdivisions such as counties, municipalities, school districts, public service or special purpose districts and the Federal Government may purchase from or through the State at any time. When the appropriate chief procurement officer determines prior to establishment of a contract that localities must mandatorily opt in or out of the contract, the following procedures shall be followed:

(1) Sixty (60) days prior to establishment of a particular contract, the appropriate chief procurement officer shall publicly notify local political subdivision of the mandatory opting requirement; and

(2) Require local political subdivisions to advise the appropriate chief procurement officer within 30 days of its desire to participate in the contract.

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 31, Issue No. 5, eff May 25, 2007.**

## **19-445.2160. Assistance to Minority Businesses.**

### **A. Definitions**

(1) "Minority Person" means a United States citizen who is economically and socially disadvantaged.

(2) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Women and other minorities to be designated by the South Carolina Budget and Control Board or designated agency.

(3) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(4) "A socially and economically, disadvantaged small business" means any small independent business concern which:

(a) At a minimum is fifty one (51) percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and who also exercise control over the business per 49 CFR Part 26, Subpart D (2006), as amended.

(b) In the case of a corporation, at a minimum, fifty-one (51) percent of all classes of voting stock of such corporation must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

(c) In the case of a partnership, at a minimum, fifty-one (51) percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

(5) "Small Business" means a for-profit concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R. Section 121 (1996), as amended. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(6) "Minority Business Enterprise" is a business which has been certified as a socially and economically disadvantaged small business.

(7) "OSMBA" means the Office of Small and Minority Business Assistance.

### **B. Certification as a Minority Business Enterprise (MBE)**

(1) A South Carolina business seeking certification as a Minority Business Enterprise must submit to OSMBA an application and any supporting documentation as may be required.

(2) Certification Process. The Certification Board within OSMBA will determine if the business is controlled and operated by socially and economically disadvantaged individuals. Upon recommendation of the Certification Board, OSMBA will certify the business as a socially and economically disadvantaged small business and issue a Certification as authorized by Section 11-35-5270 of the Procurement Code. Firms may re-apply to OSMBA one year after denied certification. Certifications are valid for five years. Firms may apply for re-certification by submitting an application and required supporting documents of eligibility.

#### C. Certification Board/Procedures

(1) The certification board, as defined below, is responsible for reviewing files and applications in order to determine whether a business should be recommended for approval or disapproval by the Director of the OSMBA (hereinafter referred to as the Director) as a certified business in compliance with Article 21.

(2) The certification board shall include three (3) members of the Office in which the OSMBA is located and is chaired by a member selected by the Director. The board will meet at the request of the Director.

(3) Applications for certification must be addressed to the Director. Upon receipt, OSMBA shall conduct an investigation of the applicant and provide the results to the Certification Board. Failure to furnish requested information will be grounds for denial or revocation of certification.

#### D. Eligibility

In order for a firm to be certified, the business must have an office in South Carolina, duly registered and licensed as a South Carolina business, it must be found to be a small independent business owned and controlled by a person or persons who are socially and economically disadvantaged. The following factors will be considered in determining whether the applicant is eligible for certification:

##### (1) Small Business

The business must meet the definition of small business contained in Subsection A hereof.

##### (2) Independent Business

a. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for certification under Article 21. In determining whether an applicant for certification is an independent business, OSMBA shall consider all relevant factors, including the date the business was established, the adequacy of its resources, and relationships with other businesses.

b. A joint venture is eligible if one of the certified business partners of the joint venture meets the standards of a socially and economically disadvantaged small business and this partner's share in the ownership, control and management responsibilities, risks and profits of the joint venture is at least 51 percent, and this partner is also responsible for a clearly defined portion of the work to be performed.

##### (3) Ownership and Control

a. The business must be 51 percent owned by socially and economically disadvantaged persons. The OSMBA will examine closely any recent transfers of ownership interests to insure that such transfers are not to be made for the sole purpose of obtaining certification.

b. Ownership shall be real, substantial and continuing and shall go beyond the pro forma structure of the firm as reflected in its ownership documents. The minority owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of ownership arrangements.

c. The contribution of capital or expertise by the minority or women owners to acquire their interest in the business shall be real and substantial. Examples of insufficient contributions include gifts, inheritance, a promise to contribute capital, a note payable to the business or its

owners who are not socially disadvantaged and economically disadvantaged, or the participation as an employee, rather than as a manager.

d. The minority owners must have management responsibilities and capabilities including the ability to hire and fire personnel at the highest level and to exercise financial control. A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed.

e. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this part, be considered as controlling the business.

f. Any relationship between a business that is applying for certification under Article 21 and a business which is not certified will be carefully reviewed to determine if there are conflicts with the ownership and control requirement of this section.

g. All securities which constitute ownership and/or control of a business for purposes of establishing it as a Minority shall be held directly by minorities. No securities held in trust, or by any guardian for a minor, shall be considered in determining ownership or control.

#### (4) Socially Disadvantaged

The only factor to be considered in determining whether a firm is socially disadvantaged is membership in a minority group which is listed in Subsection A hereof. Membership shall be established on the basis of the individual's claim that he or she is a member of one of the minority groups included in the definition of socially disadvantaged in Subsection A above and is so regarded by that particular group.

#### (5) Economically Disadvantaged

a. OSMBA will make a determination of whether a firm is socially disadvantaged before proceeding to make a determination of economic disadvantage. If OSMBA determines that the business owner is not socially disadvantaged, it is not necessary to make the economically disadvantaged determination.

b. OSMBA may consider as evidence of the business owner's economic disadvantage the following: unequal access to credit or capital; acquisition of credit under unfavorable circumstances; difficulty in meeting requirements to receive government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have restricted the owner's business development.

c. In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the business with which he or she is affiliated.

d. In considering the economic disadvantages of businesses and owners, OSMBA will make a comparative judgement about relative disadvantage. The test is not absolute deprivation, but rather whether the individuals and businesses owned by such individuals are disadvantaged in this respect.

e. It is the responsibility of an applicant business and its owner(s) to provide information to OSMBA about its economic situation when it seeks certification. OSMBA will be making a judgement about whether the applicant business and its socially disadvantaged owner(s) are in a more difficult economic situation than most businesses (including established businesses) and owners who are not socially disadvantaged. OSMBA is not required to make a detailed, point-to-point, accountant like comparison of the businesses involved.

#### E. Decertification

OSMBA reserves the right to cancel a certification at any time if a business becomes ineligible after certification. OSMBA will take action to ensure that only firms meeting the eligibility requirements stated herein qualify for certification. OSMBA will also review the eligibility of businesses with existing certifications to ensure that they remain eligible. A business organization's, ownership or control can change over time resulting in a once eligible business becoming ineligible. Certified businesses must notify OSMBA, in writing within 30 days, of changes in organization, ownership or control. When OSMBA determines that an existing business may no longer be eligible, it will file a Complaint with the Certification Board, and send a copy of the Complaint by certified mail to the business. Upon receipt



of such a complaint, the Certification Board shall conduct a hearing in accordance with the procedures set forth in the Administrative Procedures Act (§ 1-23-310, et seq., Code of Laws of South Carolina, 1976, as amended).

**HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 14, Issue No. 5, eff May 25, 1990; State Register Volume 31, Issue No. 5, eff May 25, 2007.**

### **19-445.2165. Gifts.**

#### A. Policy

It is the policy of the State that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body.

#### B. Future Contracts with Donors

Prior to accepting a gift, care should be taken to determine whether acceptance of the gift will provide the donor, directly or indirectly, an undue competitive advantage in subsequent procurements.

#### C. Definition

For purposes of this Regulation 19-445.2165, the term "donor" means the business donating the gift and all divisions or other organizational elements of the business and any principals and affiliates of the business. For purposes of this Regulation, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized subsequent to the gift which has the same or similar management, ownership, or principal employees as the business that made the gift. For purposes of this section, the term 'principals' means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions.

**HISTORY: Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.**

### **19-445.2180. Assignment, Novation, and Change of Name.**

A. "Novation agreement" is a contractual amendment by which the State recognizes a successor in interest to a State contract as provided in this regulation. The successor in interest assumes all the obligations under the contract and the transferor, when still in existence, typically guarantees the performance of the contract by the transferee.

#### B. No Assignment.

No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State.

#### C. Recognition of a Successor in Interest; Novation.

When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- (1) the transferee assumes all of the transferor's obligations;
- (2) the transferor waives all rights under the contract as against the State; and
- (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

#### D. Change of Name.

When a contractor requests to change the name in which it holds a contract with the State, the procurement officer responsible for the contract may, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement

changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by SCSR 44-4 Doc. No. 4861, eff April 24, 2020.

### **19-445.2200. Administrative Review Protective Orders.**

A. At the request of any party or on its own initiative, the appropriate chief procurement officer or the Procurement Review Panel may issue a protective order controlling the treatment of protected information for purposes of a protest or other proceeding currently pending before it. Such information may include any information exempt from public disclosure by law, such as information exempt from disclosure under Sections 11-35-410 and 30-4-40. The protective order shall establish procedures for application for access to protected information and for identification and safeguarding of that information. Because a protective order serves to facilitate the pursuit of a protest or other administrative proceeding by a protester through counsel, it is the responsibility of protester's counsel to request that a protective order be issued and to submit timely applications for admission under that order. Protected information received by a person pursuant to a protective order issued under this regulation shall be released only pursuant to and in compliance with the protective order.

B. A protective order may not prohibit a public body from releasing information which the public body must release under applicable law. A protective order may not require the release of any public record that a public body is prohibited from releasing by law. Issuance of a protective order does not preclude a party from asserting any legally cognizable privilege to withhold any document or information.

C. Before being permitted to view any protected information, counsel and any consultants retained by counsel who will review or utilize any protected information must file an application for access in accordance with the conditions of the protective order. To be entitled to access, an applicant must establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. A consultant will not be permitted access to protected information if he or she is employed by a party to the action or is working under a contract to a party. Objections to granting an applicant access to protected information must be in writing and filed within two business days after the person receives a copy of the application for access.

D. Any violation of the terms of a protective order may result in the imposition of such sanctions as the CPO or Procurement Review Panel, as applicable, deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual's practice before the CPO or Panel. A business aggrieved by violation of a protective order may seek enforcement of such order in any available judicial or administrative forum.

**HISTORY:** Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.

### **19-445.3000. School District Procurement Codes; Model.**

A. Application.

Under Section 11-35-5340, a school district is exempt from the South Carolina Consolidated Procurement Code (except for a procurement audit) if the district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the Consolidated Procurement Code and regulations in effect at the time the opinion is issued.

B. Delegation.

The authority and responsibilities under Section 11-35-5340 are hereby delegated to the Materials Management Officer.

C. Substantially Similar.

To qualify for approval, a district code should largely mirror, but need not be identical to, the Consolidated Procurement Code. Because a district code needs only to be substantially similar to the consolidated procurement code and regulations, a district code may accommodate the differing context of school districts (e.g., differences between state government and local school district operations, including size, purchasing staff resources, volume and type of procurements, and structure of its

governing body and executive hierarchy) as long as it preserves the sound procurement policies and practices underlying the rules found in the consolidated procurement code and regulations.

D. Definitions.

Covered District means a school district subject to the requirements of Section 11-35-5340. Model code means a model school district procurement code and any subsequent modifications to the model code, including instructions regarding how each district may customize the model code to an individual district's organizational structure.

E. Guidelines; Model Code.

By requiring a written opinion, Section 11-35-5340 provides for an exercise of judgment. The best interest of the state is served by exercising this judgment in a consistent manner. Accordingly, the Materials Management Office may publish guidance regarding its exercise of this judgment, including publication of a model code. In developing a model code, the Materials Management Officer should consult with all covered districts and the State Department of Education. Any model should be designed to serve and comply with the purposes and policies enumerated in Section 11-35-20 in the specific context of local school district operations, with due regard for minimizing administrative costs of compliance with the model code. Prior to publishing a model code, the Materials Management Officer must determine in writing that the model code is substantially similar to the provisions of the South Carolina Consolidated Procurement Code and these procurement regulations. Any school district may adopt the model code.

F. Duration of Written Opinion.

A written opinion issued pursuant to Section 11-35-5340 remains valid for a covered district's procurement code until the covered district seeks and receives a written opinion for modifications to its procurement code.

G. Effect of Adoption.

A procurement code adopted by a school district in accordance with all applicable law shall have the full force and effect of law.

**HISTORY: Added by State Register Volume 31, Issue No. 5, eff May 25, 2007. Amended by SCSR 44-4 Doc. No. 4861, eff April 24, 2020; SCSR 44-6 Doc. No. 4894, eff June 26, 2020.**

## **19-446. Representation in Proceedings.**

(Statutory Authority: 1976 Code § 11-35-540)

Persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants, attorneys licensed in other jurisdictions, persons possessing Limited Certificates of Admission, architects, and engineers, may appear and represent clients in protests, contract disputes and other proceedings before the Chief Procurement Officers.

**HISTORY: Added by State Register Volume 18, Issue No. 2, eff February 25, 1994.**

**Editor's Note**

This regulation was promulgated pursuant to In re: Unauthorized Practice of Law Rules Proposed by S.C. Bar, (S.C. 1992) 422 S.E.2d 123.

## **19-447.1000. Leasing of Real Property.**

### **A. LEASE OF NON STATE-OWNED REAL PROPERTY**

No governmental body shall contract for the lease, rental, or use of non state-owned real property without approval of the Office of General Services, except as specified in subsection C. Requests shall be directed to the Office of General Services. The Office of General Services shall negotiate or approve the terms of all leases of non state-owned real property unless the governmental body has been exempted.

#### **1. GENERAL REGULATIONS**

(a) The Office of General Services shall be accountable for the procurement of leased real property for governmental bodies in accordance with the regulations promulgated by the Board.

(b) All leases shall require the written approval of the Office of General Services, except when such lease is exempt from approval by the Budget and Control Board.

- (c) Before approving any lease, Office of General Services shall:
- (1) assure that all appropriate approvals have been obtained.
  - (2) verify that adequate funds exist for the lease payments;
  - (3) verify that lease payments represent no more than fair market rental;
  - (4) verify that upfitting costs represent no more than current market costs;
  - (5) verify that a multi-year financial plan has been submitted by the requesting agency for review by the Budget and Control Board's budget office.
- (d) All requests for leased real property by governmental bodies and agencies shall be submitted to the Office of General Services on a "Request for Space Form" provided by General Services.
- (1) This form shall include, but not be limited to:
    - (a) The purpose for which the space will be used.
    - (b) Any special requirements or needs with written justification (computer rooms, etc.).
    - (c) Parking requirements and justification.
    - (d) The general location or area desired.
    - (e) A multi-year financial plan for review by the Board's budget office.
  - (2) The amount of office space desired shall be computed and justified using the standards specified in Code Section 1-11-55.
  - (3) Other types of space (warehouse, laboratory, etc.) shall require a written letter of justification from the requesting agency or governmental body and shall include documentation of market standards for use of this type space. The Office of General Services shall be accountable for investigating the existing space or any other information given in the justification.
  - (4) The "Request for Space Form" or any other document requesting space or justifying the need for space shall be certified by the Director of the requesting agency or governmental body.
- (e) An agency or governmental body desiring to renew an existing lease is responsible for notifying the Office of General Services in writing of its intention to do so at least 60 days before the renewal deadline as stated in the lease. Upon approval by appropriate boards and the Office of General Services, the governmental body or agency shall notify the Lessor that it has elected to exercise its right of renewal pursuant to the lease. The Office of General Services may send each a renewal request form and a reminder notice well in advance of these deadlines.
- (f) Under no circumstances will the requesting governmental body or state agency contact or negotiate lease terms with any real estate agency, broker, builder, owner, or representative in reference to space needs without the prior written consent of the Office of General Services.
- (g) The Office of General Services will begin investigation of available rental space within ten (10) working days after receiving the "Request for Space Form".
- (h) When processing requests for space, the Office of General Services will first determine whether appropriate state-owned or state-leased space is available before exploring commercial space alternatives. If such space is available, the Office of General Services will direct the requesting agency or governmental body to occupy said space. If state-owned or state-leased space is unavailable or inappropriate, the Office of General Services shall begin a solicitation process to secure proposals for commercial space from as many qualified developers and/or brokers as is practicable.
- (i) Rental rates will be determined by the Office of General Services for all leases by use of standard acceptable market rent analysis methods.

## 2. TYPES OF LEASE TRANSACTIONS

All state leases will be categorized as one of the following five types:

- (a) Exempt Leases. Those leases exempted in accordance with subsection C or otherwise exempted by the Budget and Control Board.
- (b) Standard Lease. All leases which commit less than \$1 million in a five year period and which do not involve equity accrual.

(c) Major Leases. Any lease which commits \$1 million or more in a five year period but which is otherwise standard in all respects.

(d) Lease/Purchases. All lease transactions which include clauses providing for equity accrual.

(e) Other Leases. All leases which are not encompassed by the first four categories. At its discretion, the Office of General Services may place any proposed lease transaction in this category if it involves complex issues or methodologies which warrant special handling.

### 3. EXEMPT LEASES

All exempt leases will be administered in accordance with regulations and procedures outlined in subsection C or Budget and Control Board directives.

### 4. STANDARD LEASES

(a) The Office of General Services will be responsible for managing all aspects of soliciting lease proposals from commercial entities. In all solicitations, the Office of General Services is required to assure that equitable competition occurs in the broadest market practicable.

(b) The Office of General Services will review all proposals from prospective Lessors with the agency or governmental body. The Office of General Services will recommend the proposal which offers the most cost effective terms and conditions to the agency or governmental body after satisfying subjective criteria such as parking, location requirements, special needs, etc. If the agency accepts the recommendation, General Services will make the selection and begin negotiations to finalize the lease transaction.

(c) If the agency or governmental body cannot accept the Office of General Services' recommendation, the dispute shall be referred to the Budget and Control Board, which will make the final determination.

(d) Evaluation criteria shall include total cost (including rental payments, upfitting costs, escalations, additional rents, operating, and all other costs) and location. Other subjective criteria such as parking and other special needs may be included. Total cost shall be given the highest weight of any single factor.

(e) Before making a recommendation, the Office of General Services shall verify that:

- (1) all prior approvals have been obtained;
- (2) adequate funds exist for the lease payments;
- (3) lease payments are no more than fair market rental; and
- (4) upfitting costs are no more than reasonable market costs.

(f) The Office of General Services may reject the agency's request for additional space and/or space at a specific location.

### 5. MAJOR LEASES

(a) All regulations and procedures for standard leases will apply to all major leases.

(b) All major leases must be reviewed by the Joint Bond Review Committee and approved by the Budget and Control Board before a final lease becomes effective.

### 6. LEASE/PURCHASES

All regulations and procedures for major leases will apply to lease/purchase transactions.

### 7. OTHER LEASES

(a) At its discretion, the Office of General Services may place any proposed lease transaction in this category if it involves complex issues or methodologies which warrant special handling.

(b) The Office of General Services shall determine which of the above regulations are applicable to any special lease situation and may adopt additional procedures to meet special needs on a case by case basis.

### 8. STANDARD LEASE DOCUMENTS

(a) The Office of General Services will be responsible for drafting and updating the state standard lease document.

(b) The state standard lease document will be used in all lease negotiations unless a substitute document is approved in advance by the Office of General Services.

(c) The state lease document will incorporate cancellation provisions including a right to cancel in the event of a (a) non-appropriation of funds for the renting agency, (b) dissolution of the agency and (c) the availability of public space in substitution for private space being leased by the agency.

#### B. LEASE OF STATE-OWNED REAL PROPERTY

No governmental body shall contract with any commercial entity or other governmental body for the lease, rental, or use of state-owned real property whether it be titled in the name of the State of South Carolina or any governmental body, without approval of the Office of General Services, except as specified in subsection C. Requests shall be directed to the Office of General Services. The Office of General Services shall negotiate or approve the terms of all leases of state-owned real property unless the governmental body has been exempted.

#### C. EXEMPTIONS

The Budget and Control Board may exempt governmental bodies from leasing state-owned and non state-owned real property through the leasing procedure herein required provided, however, that annual reports be filed with the Office of General Services, prior to July 1 of each year. Annual reports shall contain copies of all existing leases of state-owned and non state-owned real property. The Budget and Control Board may limit or withdraw any exemptions provided for in this Regulation.

**HISTORY:** Added by State Register Volume 23, Issue No. 5, eff May 28, 1999.

### **19-450. PERMITS FOR CONSTRUCTION IN NAVIGABLE WATERS.**

#### **19-450.1. Scope of Duties.**

A. Scope. Unless expressly exempted, a permit issued by the Department of Health and Environmental Control is required for any dredging, filling or construction or alteration activity in, on, or over a navigable water, or in, or on the bed under navigable waters, or in, or on lands or waters subject to a public navigational servitude under Article 14 Section 4 of the South Carolina Constitution and 49-1-10 of the 1976 S.C. Code of Laws including submerged lands under the navigable waters of the state, or for any activity significantly affecting the flow of any navigable water.

B. General Duties of the Department of Health and Environmental Control. For purposes of administering these procedures, the Department of Health and Environmental Control shall serve as the permitting agency, responsible for obtaining and evaluating the views of all relevant agencies and persons, and taking such administrative actions as are appropriate to advise agencies, applicants and others concerning the procedures. The Department shall determine whether the permit should be granted or denied or made subject to any particular condition not provided in these regulations.

##### C. General Responsibilities of Applicant

1. An applicant who seeks a permit from the Department under these regulations is responsible for establishing that the proposed activity is consistent with these regulations, and for providing to the commenting agencies and the Department the information that may be required to make that determination with reasonable certainty. Failure to respond or provide requested information may result in the denial of the permit.

2. Applicants contemplating major projects are encouraged to contact the Department prior to submitting a formal application for a permit. The Department will advise the applicant of the procedures, requirements, and areas of regulatory concern, and in appropriate cases may convene an interagency meeting to assist and guide the applicant in the preparation of the permit application.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-450.2. Definitions.**

A. Board means the Board of Health and Environmental Control.

B. Department means the South Carolina Department of Health and Environmental Control.

C. Navigable waters means those waters which are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstructions, by rafts of lumber or timber or by small pleasure or sport fishing boats. Navigability shall be determined by the Department.

D. Lands and waters subject to a public navigational servitude means those lands below the mean high water line in tidally influenced areas, or below the ordinary high water mark of any nontidal navigable waterway of the state.

E. Mean high water line means that line which intersects with the shore representing the average height of high waters over an 18.5 year tidal cycle. Benchmarks purporting to have established mean high or low water values must be verified by the Department as meeting State and National Ocean Survey Standards.

F. Ordinary high water mark means the natural or clear line impressed on the shore or bank in nontidal waters representing the ordinary height of water therein. It may be determined by bank shelving, changes in the character of the soil, destruction or absence of terrestrial vegetation, the presence of litter or debris, or a combination of the above or other appropriate criteria that consider the characteristics of the surrounding area.

G. Feasible (feasibility) is determined by the Department and is based upon the best available information, including but not limited to technical input from the agencies, and consideration of economic, environmental, social and legal factors bearing on the suitability of the proposed activity and its alternatives. It includes the concepts of reasonableness and likelihood of success of achieving the purpose. "Feasible alternatives" applies to both locations or sites and to methods of design or construction and includes a "no action" alternative.

H. Person means any individual, organization, association, partnership, business trust, estate trust, corporation, public or municipal corporation, county, local government unit, public or private authority and shall include the federal government and its agencies and political subdivisions, the State of South Carolina, its political subdivision, and all its departments, boards, bureaus or other agencies.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

### **19-450.3. Exemptions.**

A. No permit is required by the Department for any activity or construction on private highlands above the mean high water line or ordinary high water mark which does not affect directly and significantly any navigable water or water or land subject to a public navigational servitude.

B. No permit is required by the Department for any activity subject to the exclusive permitting authority of the Department under § 48-39-140 et. seq. and the applicable regulations thereunder.

C. No permit is required by the Department for any normal and otherwise lawful use of the navigable waters of the state which does not involve construction, filling, dredging or alteration activity in navigable waters, or any activity significantly affecting the flow of navigable waters.

D. No permit is required for any state or federal navigational markers.

E. No permit is required for the normal maintenance and repair of any existing permitted structure, or any structure completed prior to the adoption of the Construction in Navigable Waters permitting regulation on December 31, 1976 that is currently serviceable, intact and has been maintained in good working order since that date, provided that the normal maintenance and repairs on these structures does not alter significantly the dimensions nor change the purpose, scope or use of the structure nor do the repairs and maintenance activities create a hazard to navigation nor otherwise adversely affect the navigable waters of the state, water quality or wildlife. Any activity that is intended to restore a water control structure involving impoundment that has not been continually maintained and is not currently serviceable and intact and is now in disrepair and disuse shall require a permit.

F. Any activity undertaken prior to the commencement of the Construction in Navigable Waters permitting program under regulation 19-450 promulgated on December 31, 1976, which involves a structure which has been continually maintained in good working order since then and is intact and functional on the effective date of this regulation, and which subsequently does not adversely affect water quality, navigability, or other natural resource conditions existing on the effective date shall be

exempt from the permitting process, provided, however, that the Department may require the owner or other person responsible for the structure to report the existence and condition of the structure.

G. No permit is required for any activity which requires another Department permit or certification, including but not limited to 401 Water Quality Certifications, water supply permits, National Pollutant Discharge Elimination System permits, wastewater construction permits, and mining permits. These permitting/certification areas will be required to coordinate with the Construction in Navigable Waters Permitting staff to insure the provisions of this regulation are adhered to.

H. No permit may be required for the following activities provided that the applicant or permittee, in all except emergency situations, obtains from the Department a written exemption from the permitting procedure prior to commencing work:

1. Any activity on a permitted structure that does not significantly alter the dimensions, changes the purpose, scope or use of the structure, or may create a hazard to navigation or otherwise adversely affect the navigable waters of the state, the flow of navigable waters, water quality, or wildlife. Any request to perform an activity which significantly affects the navigable waters of the state, the flow of navigable waters, water quality, or wildlife shall be processed as an amendment to the permit under section 450.14. Any activity on an unpermitted structure, or that is intended to restore a water control structure involving impoundment that has not been continually maintained and is not currently serviceable and intact and is now in disrepair and disuse, shall require a permit.

2. Any emergency construction when the construction is ordered by a duly constituted official of county, municipality or the state acting to protect the public safety from a sudden and unanticipated threat to the health or public safety. The Department must be notified promptly by telephone and not later than seventy-two hours after construction has commenced, and within thirty days of the commencement of construction, written application must be made to the Department for permission or a permit for the activity undertaken under emergency conditions.

3. Any emergency repair or replacement of a recently damaged permitted structure, or any structure completed prior to the adoption of the Construction in Navigable Waters permitting regulation on December 31, 1976 provided that it has been continually maintained in an intact and currently serviceable condition and that the repairs are essential to prevent property damage from sudden and unanticipated events which make it impossible to notify the Department prior to undertaking the activity, providing that the Department must be notified not later than seventy-two hours after construction has commenced, and written application made within thirty (30) days for permission or a permit for the activity undertaken under emergency conditions.

4. Any installation of utility lines to be attached to an existing permitted structure provided that the utility lines do not alter or reduce significantly the vertical or horizontal clearance provided by the structure.

5. Any drilling for soil borings for construction foundation testing.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-450.4. Permit Conditions.**

A. Any permit issued pursuant to these regulations is subject to the following conditions as well as any specifically mentioned in the individual permit.

1. The authorization for activities or structures granted by the permit shall constitute a revocable license to use the lands and waters within the jurisdiction of the state. Permits for activities which require continuous operation, such as marinas, will be issued for a term of ten (10) years or for such longer period as the Department may grant. These permits are renewable provided that there has been no material adverse change in circumstances.

2. The Department may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Department that such modification or removal is consistent with the requirements of 450.9(A). Modification or removal after the permit has been granted or refusal to renew a permit shall be ordered only after reasonable notice stating the reasons therefor and providing the permittee an opportunity to be heard.

3. All activities authorized by the permit shall be consistent with and limited by the terms and conditions of the permit; any unauthorized work or activity different from or inconsistent with the



permit may result in the modification, suspension, or revocation of the permit in whole or in part, and the institution of such legal proceeding as the State of South Carolina may consider appropriate.

4. The construction authorized by this permit must be completed within three years of the date of issuance or such other time as the Department may set for good cause shown. Extensions of time may be granted provided that the requests are submitted to the Department in writing prior to the expiration of the original time period, state whether there has been any change in the circumstances since the permit was approved and the reason for the extension of time.

5. No permit shall convey nor be interpreted as conveying expressly or implicitly, any property right in the land or water in which the permitted activity is located. No permit shall be construed or interpreted as alienating public property for private use, nor does it authorize the permittee to alienate, diminish, infringe upon or other-wise restrict the property rights of other persons or the public.

6. The grant, denial, modification, suspension, revocation of a permit or removal of a structure authorized under these regulations, shall not be the basis for any claim for damages against the State of South Carolina. In no way shall the State be liable for any damage as the result of the erection of permitted works.

7. The permitted activities shall not block or obstruct navigation or the flow of any waters unless specifically authorized herein; no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the work authorized by the permits; and that no spoil, dredged material, or any other fill material be placed below the mean high water or ordinary high water elevation, unless specifically authorized herein.

8. The permittee shall make every reasonable effort to perform the authorized work in a manner to minimize adverse impact on fish, wildlife, or water quality and shall maintain any authorized structure in good condition in accordance with approved plans and specifications.

9. The permittee shall allow the Department or its authorized agents or representatives to make periodic inspections at any time deemed necessary to assure that the activity being performed is in accordance with the terms and conditions of the permit.

10. Permits are issued in the name of the applicant and may not be assigned to another without the written permission of the Department and the written agreement of the transferee to abide by all the terms and conditions of the permit.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

### **19-450.5. Application Procedure to Obtain Permit.**

A. Preliminary Interagency Meeting. The Department may convene at any time a meeting of commenting agencies and the applicant to provide assistance to the applicant, to explain the statutory requirements and areas of agency concern, to provide a preliminary review of the proposal, or to otherwise expedite the administrative aspects of filing an application for a permit.

B. Proposed Activity Requiring Only State Construction in Navigable Waters Permits. Except for applications filed with federal agencies described below, applications for a state permit shall be made to the Department on forms provided by the Department containing, but not limited to:

1. the name and address of the applicant;
2. the location of the proposed activity, including the navigable stream where the construction or activity is contemplated. An appropriate map of the area should be included;
3. a brief description of the proposed activity, its purpose and intended use, including a drawing of the type of structures and method of construction including a drawing of the type of structures and method of construction including size specifications;
4. a plan and elevation drawing showing the general and specific site locations and character of all proposed activities including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area and the distance of encroachment of the activity into the water. A handdrawn sketch showing the size and shape of the structure and a location map will be considered sufficient detail for docks, piers, boardwalks or bulkheads without fill and extending no more than fifty (50) feet from the shoreline;

5. evidence of ownership or the consent of the owners of the adjacent high land on which any part of the projected activity will be located;

6. certification that the applicant has or will publish a notice describing the application in a newspaper of general or local circulation in the county where the encroachment is sought one time. Proof of the publication shall be furnished promptly, and the notice by the applicant shall be in the substantially the following form:

#### PUBLIC NOTICE

*(Applicant)* has applied to the South Carolina Department of Health and Environmental Control for a Construction in Navigable Waters Permit to *(brief description of work)* for *(public/private)* use in *(name and location of waterbody)*. Comments will be received by South Carolina Department of Health and Environmental Control at 2600 Bull St., Columbia, SC, 29201, ATTN: Division of Water Quality and Shellfish Sanitation, until *(insert date -15 days from date of this notice)*.

7. When considered appropriate by the Department, additional information may be required.

C. The Department shall promptly issue a notice to affected state agencies and make such other notice as it deems appropriate no later than fifteen (15) days after receipt of all information necessary to process the application.

D. Activity Requiring Construction in Navigable Waters and Federal Permits

1. When the applicant must obtain authorization from Corps of Engineers or the Coast Guard pursuant to federal law, he is directed to make application to those agencies in the style and on the forms provided by them. By agreement the above applications to federal agencies may be jointly used by the federal agencies and the State and no separate application may be required for the State permit.

2. The federal permitting agency shall publish and provide to interested agencies, groups and persons a joint public notice or public notice letter containing the permit application and clearly stating the requirement of a State permit and if required, certification that the permitted activity does not contravene the Coastal Zone Management Plan. Note: The federal permitting agency may require a certificate of water quality or waiver thereof from the Department of Health and Environmental Control.

E. Upon receipt of the joint public notice the Department shall notify the applicant that a state permit may or may not be required, and if, on the face of the joint public notice or application therein, it appears to the Department that insufficient or inaccurate information is presented, the Department shall notify the applicant and request such additional or corrected information as may be necessary, and that in addition to the joint public notice or public notice letter provided by government agencies, the applicant must publish a notice describing the application in a newspaper of general or local circulation in the county where the encroachment is sought one time. Proof of the publication shall be furnished promptly, and the notice by the applicant shall be in the substantially the following form:

#### PUBLIC NOTICE

*(Applicant)* has applied to the South Carolina Department of Health and Environmental Control for a Construction in Navigable Waters Permit to *(brief description of work)* for *(public/private)* use in *(name and location of waterbody)*. Comments will be received by South Carolina Department of Health and Environmental Control at 2600 Bull St., Columbia, SC, 29201, ATTN: Division of Water Quality and Shellfish Sanitation, until *(insert date - 15 days from date of this notice)*.

F. Processing of the State permit application by the Department shall commence upon receipt of the joint public notice and shall be processed concurrently but separately from any federal authorization.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

### **19-450.6. Review of Permit Application and Comment by State Agencies.**

A. Review by Agencies

1. State agencies commenting on permit applications are collectively responsible for providing to the Department a total assessment of the impact of any proposed work affecting navigable waters,

stream beds, submerged lands or other lands or waters within the state's jurisdiction. Each agency is individually responsible for a specific area or field of review based on that agency's statutory responsibilities or primary interests as they relate to the protection or development of the State's natural resources. Within its area of statutory responsibility or primary interest, each agency is to identify the advantages and disadvantages of the project on the lands and waters of the state and to provide an assessment of the relative merits of the proposed activity whether environmentally harmless or not.

2. An agency which comments on a proposed activity that requires a permit under these regulations is responsible for presenting and supporting the comments and objections, if any, made by that agency during any administrative or judicial proceedings growing out of the permitting process.

B. Time for Response. All State agencies receiving public notice of permit applications from the Corps of Engineers, Coast Guard or the Department must submit their comments directly to the Department within thirty (30) days of the receipt of the public notice. Requests by State agencies for extensions of time shall be submitted to the Department in writing before the expiration of the original comment period. A failure to comment, or to request an extension of time during that period shall be treated as no objection to the application. The Department may consider untimely comments for good cause shown.

C. Form and Scope of Comments. Comments and their supporting materials are used to review the proposed activity, as the basis for discussing the terms and conditions of the proposed activity, for conciliating objections, if any, by the Department in making its decision. Therefore, comments by an agency should be objective, and state specifically its conclusions concerning the permit application and include in summary form the information that supports the conclusion of the agency. Objections shall be specifically stated and contain supporting material. Comments which are without support, or are limited solely to use of adjacent private highlands, or are without a comparative assessment of the beneficial and detrimental impacts of the projected activity on lands and waters subject to the jurisdiction of the Department, may, in the discretion of the Department, be disregarded as non-responsive, or returned to the agency for reconsideration or reformulation. All comments of agencies shall be public records available to the public and applicant at the Department.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

## **19-450.7. Procedure if Agency Objects to Activity Requiring State Permit.**

### **A. Conciliation of Agency Objections**

1. Within thirty (30) days of notification of a permit application, or any extension thereof, an agency objecting to or intending to object to a projected activity shall notify the Department and the applicant of the specific objection(s) of the agency, the reasons for the objection and the supporting grounds for the objection. When the permit application raises complex issues or more than one agency objects, the Department shall coordinate the conciliation process. If only one agency objects, the Department shall inform the applicant that he is responsible for meeting with the agency and considering how the objection might be reconciled. The applicant and the objecting agency are primarily responsible for the conciliation process, but the Department may support and assist their efforts to conciliate and resolve their differences.

2. In the reconciliation process, the agency and the applicant shall consider how the objections might be reconciled by: (a) avoiding the adverse impact by not taking a certain action or parts thereof; (b) minimizing the adverse impact by limiting the degree or magnitude of the action or its implementation; (c) rectifying the objection by repairing, rehabilitating or restoring the affected area; and (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the permitted activity. The applicant shall provide any additional information reasonably necessary to resolve the objections.

B. Notice of failure of Conciliation; Joint Statement of Objections. The Department will not take action on a permit application upon which an objection has been made until it has received notice that the objection has been resolved, or that in the opinion of either the applicant or agency that all efforts to resolve the objection have failed and that further negotiation will be of no benefit. Within fifteen days after notice that reconciliation efforts have failed, the applicant and each agency with an

unreconcilable objection shall submit to the Department a short and plain statement of the matter in dispute, the position of the agency, the position of the applicant, supported by such facts and information as are relevant. The parties should identify and clarify those issues that prevented reconciliation. If possible the parties should prepare a joint statement so as to expedite the permitting process.

C. Objections that the Proposed Activity Violates The Coastal Zone Management Plan or Water Classifications and Standards System

1. In those applications involving activity within the Coastal Zone where the Office of Ocean and Coastal Resource Management has determined, after efforts to conciliate the objection have failed, that the projected activity contravenes the Coastal Management Plan, a Notice of Proposed Decision proposing to deny the project will be issued. This Notice of Proposed Decision will allow fifteen (15) days for appeal of the decision.

2. In those applications where the Department has determined that the projected activity violates Water Classifications and Standards or endangers the public health, and all efforts to resolve the objection have failed, a Notice of Proposed Decision proposing to deny the project will be issued. This Notice of Proposed Decision will allow fifteen (15) days for appeal of the decision.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

### **19-450.8. Comments by Public on Permit Application.**

A. Comments From Interested Persons. Any person who may be affected by the grant or denial of the permit, or the conditions under which a permit may be granted, may submit, in writing, comments or objections to the proposed activity to the Department. These comments will be received by the Department for 15 days after a public notice is published in a newspaper by the applicant or within thirty (30) days after public notice of the proposed activity is distributed by federal or state agencies, whichever is later. The comments may include a request that the commentor be notified of the initial decision. The comments of interested persons shall be public records available to the applicant and all interested persons and the applicant may respond to them.

B. Public Informational Hearings. The Department may hold public hearings if such hearing are deemed necessary to receive information from the public or obtain local public comment and whenever twenty (20) or more individual written requests are received during the public comment period. The hearings shall be held after at least fifteen (15) days notice and whenever possible, in the county where the project is to be located. Besides an oral presentation, a copy of the comments and the supporting material should be submitted in writing, or if not in writing a summary of the comments received be prepared by the Department for inclusion in the record. Written comments on the matters raised at the Public Informational Hearing may be made within 15 days of that hearing.

C. Application and Related Documents Available to Public. The application for a permit, any amendments thereto, any official comments on the application by agencies or comments by the public including joint or individual statements of objections, any notice of failure of conciliation, any proposal for replacement or compensation for unavoidable detriments, and any comments thereto, all records and statements from the public informational hearing and comments thereon and all extensions of time and other scheduling matters and the decision by the Department, and all similar documents filed with the Department shall be available to the public as provided by law.

**HISTORY: Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.**

### **19-450.9. Review of Comments and Action by the Department.**

A. Review by the Department. The Department is responsible for assessing the total impact of the projected activity on the navigable waters and lands subject to the jurisdiction of this regulation, as well as the impact on the economy and natural resources of the state. The Department shall be concerned with the utilization and protection of important state resources and balance the extent and permanence of reasonably foreseeable benefits and detriments of the projected activity including its impact on conservation, economics, aesthetics, general environmental concerns, cultural values, fish and wildlife, navigation, erosion and accretion, recreation, water quality, water supply and conservation, and determine whether the projected activity is consistent with the needs and welfare of the public. In

particular the Department shall consider the comments and objections of the affected agencies as well as the public, and the extent to which:

1. the activity requires construction in, on or over a navigable waterway, and the economic benefits to the state and public from such location;
2. the activity would harmfully obstruct navigability or the natural flow of navigable waters or cause erosion, shoaling of navigable channels, or the creation of stagnant waters;
3. the activity would impact fish and wildlife, water quality and other natural resource values or could affect the habitats or rare and endangered species of wildlife and irreplaceable historic and archaeological sites associated with public lands and waters;
4. the activity could affect public access to and use of public lands;
5. the economic benefits to the state and public from the authorized use of lands and waters meets or exceeds the benefits from preservation of the area in its unaltered state;
6. there is any adverse environmental impact which cannot be avoided by reasonable safeguards;
7. all feasible alternatives are taken to avoid adverse environmental impact resulting from the project; and,
8. the long range, cumulative effects of the project, including the cumulative effects of similar projects, may affect navigable waters.

B. Request For Proposal For Replacement or Compensation For Unavoidable Detriments.

1. If the Department tentatively determines: (1) that the proposed activity is likely to produce an adverse impact on navigable waters or other associated natural resources; (2) that the applicant has already agreed to or taken all reasonable and feasible measures to prevent the detriment; and (3) the adverse impact relative to the benefit is not so great as to automatically require a recommendation of disapproval of the proposed activity on that or other grounds; and (4) that the proposed activity otherwise meets the standards in 450.9(A), the Department may request the applicant to submit a proposal that provides or creates natural resource benefits that replace or compensate for the economic, environmental and natural resource benefits lost by the proposed activity so that even considering the detriment or negative impacts of the project, the proposal, including the compensation/replacement, results in a net gain of natural resource benefits to the state.

2. Provided, however, that no compensation or replacement (1) may be made for a project that produces no benefits to the public or state; (2) may be made where the proposed activity amounts to a taking of public land for private purposes; (3) when there is a reasonable, and feasible alternative, step, effort or activity is available that prevents or corrects a detriment created by the proposed activity. A feasible and reasonable alternative, step, effort or activity shall not be deemed unreasonable or infeasible because it would require the applicant to expend more time, effort or expense than the proposed replacement or compensation offered by the applicant.

3. The applicant shall inform the Department within fifteen (15) days whether it intends to submit a proposal for replacement or compensation. If no proposal is submitted the application shall be processed under 450.9(C).

4. The applicant shall submit the proposal for compensation/replacement to the Department which shall be a public record available to the public, and submit it to all commenting agencies which shall make its response to the Department within fifteen (15) days, or such other time as may be set. The Department may use the general procedures in the conciliation process under 450.7 when, in its opinion, it will expedite review of the proposal. In addition to the factors mentioned above, the commenting agencies shall consider:

(a) whether the replacement/compensation proposal provides resources of the same type, quality and extent as those destroyed or burdened by the proposed activity and replaces the same type of natural resource or benefit adversely affected by the projected activity so that the proposal, if accepted, results in compensation in kind rather than the substitution of poorer or more common natural resources for more valuable lands and waters or more rare resources;

(b) whether the replacement/compensation proposal will provide the public with comparable access as previously available to the lands or waters burdened by the projected activity;

(c) whether the replacement/compensation is located on or near the same area as the lands or waters burdened by the proposed activity;

(d) whether the replacement/compensation produces specific benefits to the state and public beyond those produced by compliance with existing state or federal regulation of the resources included in the proposal;

(e) whether the replacement/compensation proposal presently provides specific benefits without further effort or expense by the applicant or the state;

(f) whether the replacement/compensation proposal will require the state to incur costs in obtaining, maintaining or preserving the resources, land or waters in the proposal in appropriate condition;

(g) whether the replacement/compensation proposal is comparable to the lands and waters of the projected activity, when the areas surrounding the respective locations are considered.

(h) whether the replacement/compensation proposal provides permanent benefits.

(i) the likelihood that the benefits in the replacement/compensation proposal will occur, the person responsibility for monitoring the replacement/compensation to see that it does occur as proposed, and modifications or alternatives if the benefits do not occur.

(j) the necessity for obtaining financial guarantees including secured bonds to insure that the applicant complies with all of the terms and conditions of the replacement/compensation proposal.

(k) such other factors, conditions or requirements that may be necessary to insure that specific and permanent benefits accrue to the public or the state from the proposal that compensate or replace the resources burdened by the proposed permitted activity. After the agencies have reviewed the replacement/compensation proposal, and after any efforts to resolve objections have occurred if in the opinion of the Department such efforts would be useful, the applicant shall submit to the Department the proposal for replacement/compensation and the commenting agencies shall submit to the Department their comments or objections, if any to that proposal.

#### C. Notice of Proposed Decision

1. Promptly after the receipt of all written agency comments and objections to the proposed activity including an offer of replacement or compensation under 450.9(B), if any, the Department shall review all comments and supporting information and, the materials submitted by the applicant, and, in light of the standards listed above make its preliminary decision in the form of a Notice of Proposed Decision.

2. The preliminary decision shall be supported by findings on the relevant issues, including those raised by the comments and objections, if any. The findings shall be supported by materials in the record.

3. Whenever the preliminary decision is inconsistent with the written objection of the agency or other person to the application, the Department shall state the facts found by the Department and the reasons supporting its conclusions. For purposes of this section, the same or similar objections may be treated as one subject. If an objection by an agency or other person, or a response thereto by the applicant is without adequate support, Department shall so state, and may refuse to consider the objection or response and render decision accordingly.

4. The Department may conclude that the permit be granted, or denied, or conditionally granted or denied unless the applicant does or does not do certain activities in connection with the permitted activities.

5. The Notice of Proposed Decision shall advise of availability of related file information and shall be mailed to the following:

(a) the applicant;

(b) the authorized agent, if any;

(c) agencies having jurisdiction or interest over the activity site;

(d) owners or residents of property adjoining the area of the proposed activity; and

(e) those persons providing comment in response to the initial notice of application.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.10. Appeal of the Notice of Proposed Decision.**

A. Persons Who May Appeal. Any person with legal standing to contest the decision of the Notice of Proposed Decision to grant or deny a permit under this regulation may appeal that decision to the Board. One objecting only to the highland use of the property, or on grounds other than the impact the proposed activity will have on navigable waters or the economy or natural resources of the state, or who has not submitted written comments on the project including any proposal for replacement/compensation shall not be deemed to have legal standing to contest the decision.

B. Time for Appeal; Contents; Notification of Appeal to Others. A person with legal standing to contest a decision must submit a written request for an adjudicatory hearing before the Department within fifteen (15) days of notification of proposed permit. Such request must set forth the manner in which the person is adversely affected and the grounds for the request. If no appeal of the proposed decision is received, the proposed permit decision shall become the Department's final decision.

C. Hearing Officer; Date of Hearing. Requests for hearing shall be processed in accordance with the South Carolina Administrative Procedures Act and any applicable procedural rules and regulations. Determinations of whether a person has legal standing to contest a determination shall be made in the course of the contested case procedures.

D. Appeals of a permit which include coastal zone consistency certification will be heard according to the above procedures unless the appeal is based exclusively on a coastal zone management issue. In that case the appeal will be heard according to the procedures for appeals of coastal zone consistency certifications.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.11. Final Decision of the Board and Judicial Review.**

Board review and any subsequent judicial review of the order of the Administrative Law Judge shall be allowed according to law and applicable procedures, rules and regulations.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.12. Unpermitted Activity; Review of Previously Permitted Activity.**

A. Any activity undertaken after the commencement of the Construction in Navigable Waters permitting program under regulation 19-450 promulgated on December 31, 1976 for which a permit is required but was not obtained is in violation of these regulations. Such activity may be permitted providing that it is consistent with these regulations, and the applicant promptly complies with the permitting process. Unless specifically authorized by the Department, an applicant may not complete any structure or continue any activity until the permit is issued.

B. Any person who has received a Construction in Navigable Waters permit that has an expiration date shall notify the Department every ten years after the permit was granted and report the status or condition of the permitted structure or activity, any repairs or alterations, and any material changes in the navigable waters or lands of the state. The Department shall review the report, make such investigation as it deems appropriate, and either renew the permit or revoke or modify the permit, giving the holder due notice and opportunity to be heard. If the Department determines that there have been significant changes since the permit was originally granted, or that a structure that originally was exempt from the permitting process adversely affected water quality, navigability, or natural resources or other conditions as they existed on or about the effective date of this regulation, it may require the applicant to comply with the provisions of Reg. 450.5 through 450.11.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.13. Amendments to Permits or Applications for Permits.**

A person who has been issued a permit by the Department may petition for an amendment to the permit. If the amendment reduces the size of the permitted structure, or the permitted activity, and results in less intrusive impact on the navigable waters and lands of the State, the Department may grant the amendment without requiring additional agency and public notice and comment. Any request for an amendment which enlarges the proposed structure or activity or, in the opinion of the Department, may produce a greater impact on the navigable waters and lands of the State shall be given new public and agency notice and comment under Reg. 450.5 through 450.11.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.14. Minor Projects.**

The Department may expedite the processing of an application for permits for projects under this regulation, including reducing the time for public or agency comment, if the projects by their nature, size, location or use have a negligible impact on navigable streams, and do not involve proposals for replacement/compensation under 450.9(B), and do not require a permit by any other federal or state agency. Provided, however, that the expedited procedures shall require at least one public notice of the application, permit public comment for at least fifteen (15) days, and provide for comment by the affected agencies.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.15. General or Block Permits.**

The Department, using the procedures under this regulation, may issue general or block permits to an agency, political subdivision or public service corporation for certain clearly described categories of work or substantially similar structures in a particular areas. Once the general or block permit is issued, individual Department permits for structures within the categories are not required. The agency, political subdivision or public service corporation as permit administrator shall report to the Department when structures or activities are authorized under the block permit.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-450.16. Saving Clause.**

If any provision of these regulations is adjudged invalid or unconstitutional, the remainder, and the application of their provisions to other persons shall not be affected thereby.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 19, Issue No. 6, eff June 23, 1995.

## **19-470. SOUTH CAROLINA BUILDING CODES COUNCIL REGULATIONS.**

### **19-470.1. Purpose.**

These regulations are intended to establish procedures for the operation of the South Carolina Building Codes Council and the application and administration of its authority. It is further intended that these regulations establish a formal standard policy and specific criteria on which the Council will base its approval or disapproval of proposed modifications to building codes. It is also intended that these regulations establish a formal standard policy and specific criteria on which the Council will base its approval or disapproval of proposed modifications to or variations from, the required state energy standards.

### **19-470.2. Definitions**

For the purpose of these regulations, the following words or terms are defined as meaning:

(a) "Agency" means any division, department or section of state or federal government.

(b) "Amendment(s)" means the changing of any word, number, date, section or reference in either the text or appendix (if adopted) of any building code, regardless of whether the effect is more or less restrictive.



(c) “Applicable Governing Body” means a city, county, state, state agency or other political government subdivision or entity authorized to administer and enforce the provisions of this code, as adopted or amended.

(d) “Building Codes” means all construction codes, standards or documents presently listed by name in Chapter 9 of Title 6 of the Code of Laws of South Carolina, 1976, as amended.

(e) “Building Codes Act” means the Building, Housing, Electrical, Plumbing and Gas Codes Act, Chapter 9 of Title 6 of the Code of Laws of South Carolina, 1976, as amended.

(f) “Building Official” means the officer or other designated authority, or duly authorized representative, charged with the administration and enforcement of building codes and standards.

(g) “Climatological” means the susceptibility of specific unusual reoccurring weather or atmospheric conditions for a local jurisdiction, including hurricanes, tornados, damaging wind, lightning, or floods due to rainfall.

(h) “Council” means the South Carolina Building Codes Council as established by Chapter 9 of Title 6 of the Code of Laws of South Carolina, 1976, as amended.

(i) “Division” means the Office of General Services, State of South Carolina Budget and Control Board.

(j) “Energy Standards” means the Building Energy Efficiency Standard Act, Chapter 10 of Title 6 of the Code of Laws of South Carolina, 1976, as amended.

(k) “Flood(ing)” means temporary inundation of normally dry land areas from the overflow of inland or tidal waters or from the unusual and rapid accumulation of runoff or surface waters by excessive rainfall, snowmelt, wind storms or any combination of such conditions.

(l) “Geographical” means the geographic or topographic characteristics of a specific area or region.

(m) “Geological” means the structure of a specific area or region of the earth’s surface.

(n) “Local Enforcement Agency” means the agency of local government with authority to make inspections of buildings and to enforce the laws, ordinances, and regulations enacted by the State and local government, which establish standards and requirements applicable to the construction, alteration, repair and occupancy of buildings.

(o) “Local Government” means any county, city, municipal corporation, or other political subdivision of this State and state agencies with authority to establish standards and requirements applicable to the construction, alteration, repair and occupancy of buildings.

(p) “Local Jurisdiction” means any county, city, town, village or other political subdivision of the State of South Carolina.

(q) “Modification(s)” means the changing of any word, number, date, section or reference in either the text or appendix (if adopted) of any building code, regardless of whether the effect is more or less restrictive.

(r) “Modular Act” means the Modular Buildings Construction Act, Chapter 43 of Title 23 of the Code of Laws of South Carolina, 1976, as amended.

(s) “Physical” means the natural stable and unstable characteristics and conditions of the land area within a local jurisdiction, including topography, geography, geology, water table and seismic activity.

(t) “Variation(s)” means the changing of the Energy Standards or any building code in either the text or appendix (if adopted), the nature of which, would accept an alternate building material or alternate method of compliance.

### **19–470.3. Powers Duties, and Responsibilities of Council.**

(a) The Council shall clarify the various aspects and provision of the Building Codes Act, the Modular Act and their corresponding regulations, as may be necessary to carry out their intended purposes.

(b) The Council shall review requests by local jurisdictions, for variations or modifications to their adopted building codes.

(c) The Council shall review requests by local enforcement agencies, for variations from the Energy Standards.

(d) The Council shall monitor the adoption of building codes by local jurisdictions to insure compliance with the Building Codes Act.

(e) The Council shall produce records of all its transactions and minutes of all its meetings, hearings and proceedings.

#### **19-470.4. Duties and Responsibilities of Division.**

(a) The Division shall provide the personnel to serve as staff for the Council. Such staff shall have the duty and responsibility to:

(1) Maintain an accurate and complete record of all meetings, hearings, proceedings, correspondence and technical work performed by and for Council;

(2) Make all records and documents of Council available for public inspection any time during normal working hours;

(3) Prepare and provide all information, documents and exhibits necessary for the Council agendas and meetings; and,

(4) Perform such other related tasks as may, from time to time, arise.

(b) The Division shall interpret the Building Codes Act and these regulations.

(c) The Division shall provide legal counsel for the Council.

(d) The Division shall enforce the provisions of the Building Codes Act.

#### **19-470.5. Council Officers.**

(a) The Council shall elect from its appointed members, a chairman, a vice-chairman and a secretary.

(b) Election of officers shall occur during the first meeting of each calendar year. All elected officers shall assume office upon adjournment of the meeting at which the election occurs.

(c) The duties of each officer shall be as follows:

(1) Chairman—Preside over all meetings of the Council, call special meetings as the need may arise, authenticate by signature all licenses, resolutions, documents and other instruments of Council and perform such other duties as may fall within the jurisdiction of the office;

(2) Vice-chairman—Function as chairman in the absence of the chairman and perform such other duties as may fall within the jurisdiction of the office; and,

(3) Secretary—Function as chairman in the absence of the chairman and vice-chairman, swear in all witnesses for hearings conducted by Council and perform such other duties as may fall within the jurisdiction of the office.

(d) All officers shall serve for a period of one year or until their successors are elected.

(e) Vacancies occurring in any officers position shall be filled in the following manner.

(1) If, during the course of any unexpired term, the office of chairman is vacated, the vice-chairman shall, immediately and without any further action of Council, be named chairman and continue in that capacity until the next regular election.

(2) If, during the course of an unexpired term, the office of vice-chairman or secretary is vacated, the Council shall fill the vacancy by election during its next official meeting. The elected member shall assume office immediately and continue in that capacity until the next regular election.

#### **19-470.6. Council Meetings.**

(a) The Council shall meet regularly on a monthly basis. Regularly scheduled meetings may be cancelled by the chairman by giving written notice to all remaining members. In addition to the regularly scheduled meetings, the chairman may call special meetings at any time throughout the year.

(b) All formal agenda items and supporting documentation shall be submitted to the Council staff not later than ten (10) working days prior to the meeting date. The prepared agenda and the meeting

notice shall be mailed to each Council member no later than seven (7) working days prior to the meeting date. The meeting notice shall contain the date, time and place the meeting will be held.

(c) All meetings shall be open to the public. Notices designating the date, time and place of the meeting shall be posted at the offices of the Council, not later than twenty-four hours before the meeting starting time.

(d) Minutes of every meeting of Council shall be produced and distributed to each Council member. The minutes shall reflect the names of all persons in attendance, each item and action taken and all motions, seconds and votes made during the course of the meeting. All recorded minutes shall be approved by motion, second and vote at a meeting of Council before they will be considered official. Only official minutes shall be made available to the general public. A copy of all official minutes of Council meetings shall be maintained in the offices of the Council and made available for public inspection during all normal working hours.

### **19-470.7. Building Codes Amendment Procedure.**

(a) The Council shall review and grant variations or modifications to any of the building codes adopted by a local jurisdiction, when it determines that the changes are required to meet local needs due to physical or climatological conditions. For the purpose of this section, the words "Physical" and "Climatological" shall have only the meanings as defined in these regulations.

(b) Requests for building codes variations or modifications may only be considered when submitted to Council by an elected representative or authorized employee of the local jurisdiction proposing the changes.

(c) All requests for variations or modifications shall be submitted on a form approved by Council and must be accompanied with sufficient test information, studies, data or other documentation to fully explain and justify the issues to be considered. The submittal should include a list of the persons wishing to testify and their titles and affiliations. Each variation or modification shall be submitted on a separate form. Information submitted shall be legible and each form must contain the following:

- (1) Name, address, phone number and title of the person making the request;
- (2) Name of jurisdiction for which the variation or modification is being submitted;
- (3) The full wording (either added or deleted) of the proposed variation or modification and the code(s) section(s) affected;
- (4) The physical or climatological basis for the request and the reason that the suggested change would correct the condition.

(d) Variations and modifications granted to any specific edition of a building code shall not carry over into any later editions of the same document. If a local jurisdiction desires to apply variations or modifications of any edition of a building code to any later or subsequent edition of the same document, a new request before Council shall be submitted.

(e) Variations and modifications granted to any local jurisdiction shall apply only to site constructed buildings. Structures approved and constructed in compliance with the Modular Act shall not be affected by any local building codes variations and modifications. All properly labeled modular buildings shall be accepted by the local enforcement agency as being in full compliance with all of its adopted building codes.

(f) A local jurisdiction shall not propose a variation or modification which will amend, suspend, eliminate or supersede an existing statute, policy, rule or regulation of any state or federal agency.

(g) Proposed variations and modifications of building codes shall not take effect in any jurisdiction until after they have first been reviewed and approved by the Building Codes Council.

### **19-470.8. Qualifications for Building Codes Amendments.**

A local jurisdiction may qualify for a variation or modification to any of the building codes, by establishing that the basis for the requested amendment is either physical or climatological in nature.

(a) To qualify by physical basis, a jurisdiction must demonstrate that it possesses unique physical qualities, such as unusual characteristics or composition of soils, unusual geological conditions (including earthquakes), unusual geographical conditions, unusually varying or extreme ranges in the topography of the land or any other natural condition.

(b) To qualify by climatological basis, a jurisdiction must demonstrate that it experiences weather conditions which are unusual to, confined to, occurring on a regular or seasonal cycle or determined through research or past experiences to have a high probability of reoccurrence within its area. Climatological conditions may include the known occurrence of hurricanes, tornados, damaging wind, snow, flooding caused by rainfall, lightning or any other form of natural weather related phenomenon.

#### **19–470.9. Energy Standards Variation Procedure.**

(a) The Council shall review and grant variations to the Energy Standards, when it determines that conditions requiring special or different building standards exist within any local jurisdiction.

(b) Requests for variations to the Energy Standards may only be considered when submitted to Council by the local enforcement agency proposing the changes and, if approved, are valid only within the requesting jurisdiction.

(c) All requests for variations shall be submitted on a form approved by Council and must be accompanied with sufficient test information, studies, data or other documentation to fully explain and justify the issues to be considered. The submittal should include a list of the persons wishing to testify and their titles and affiliations Each variation shall be submitted on a separate form. Information submitted shall be legible and each form must contain the following:

- (1) Name, address, phone number and title of the person making the request;
- (2) Name of jurisdiction for which the variation is being submitted;
- (3) The full wording and nature for the proposed variation;
- (4) The basis or reason for the request.

(d) Variations granted to any local jurisdiction shall apply only to site constructed buildings. Structures approved and constructed in compliance with the Modular Act shall not be affected by any variation to the Energy Standards that may be granted to a local jurisdiction. All properly labeled modular buildings shall be accepted by the local enforcement agency as being in full compliance with the Energy Standards.

#### **19–470.10. Energy Standards Appeal Procedure.**

(a) The Council shall review and decide appeals to the requirements of the energy standards when certain occupancy or construction conditions are proven to exist.

(b) Appeals may be brought before Council by any person, persons or parties who may be affected by any provision of or decision made pursuant to the administration or enforcement of the Energy Standards.

(c) All appeals shall be submitted on a form approved by Council and must fully explain and justify the issues to be considered. The submittal should include a list of the persons wishing to testify. Each appeal shall be submitted on a separate form. Information submitted shall be legible and each form must contain the following:

- (1) Name, address and phone number of the person making the request;
- (2) Name of jurisdiction in which the structure involved is located;
- (3) The nature of the appeal;
- (4) The basis or reason for the appeal.

(d) Any decision of Council may be appealed to a court of competent jurisdiction.

#### **19–470.11. Administration of Modular Act.**

The Council shall implement the provisions of the Modular Act and its accompanying regulations.

#### **19–470.12. Building Codes Adopted.**

(a) A local government may adopt any combination of building codes, in accordance with the Building Codes Act, for use within its respective jurisdiction. If a local government does elect to adopt building codes however, they must be only those listed in the Building Codes Act, as published, without local amendments, deletions or additions except as approved in accordance with the Building

Codes Act. Local governments are prohibited from writing or publishing any other building codes in part or in whole.

(b) All subsequent editions of every building code adopted by a local government, must also be adopted within one year of the date the document is made available by its publisher. Authorized amendments issued between editions may, at the option of the local government, be adopted as published, without further amendments, deletions or additions.

(c) The appendices included with all building codes are not intended to be administered or enforced unless specifically referenced in the texts of the codes or specifically included by name and letter designation in the adopting ordinance of the local government.

### **19-470.13. Injunctive Relief.**

(a) In the event of a proposed or actual violation of the prescribed building codes or these regulations, injunctive relief shall be as provided by the Building Codes Act.

(b) In the event of a proposed or actual violation of the Modular Act or its regulations, injunctive relief shall be provided by the Modular Act.

Private suits for damages resulting from violations of the Modular Act or its regulations, shall be as provided by the Modular Act.

(c) In the event of a proposed or actual violation of the Energy Standards, injunctive relief shall be as provided therein.

### **19-470.14. Penalties.**

(a) Any person violating the codes listed in the Building Codes Act or the regulations adopted pursuant to the provisions of the Building Codes Act, shall be subject to the penalties provided therein.

(b) Any person violating any of the provisions of the Modular Act or its regulations, shall be subject to the penalties provided therein.

(c) Any person violating any of the provisions of the Energy Standards, shall be subject to the penalties provided therein.

## **ARTICLE 5 LOCAL GOVERNMENT**

Statutory Authority: Section 6, Part II, Act 632 of 1978 [1976 Code § 1-11-25]

### **19-501. Eligibility Requirements for Rural Improvement Funds.**

1. Any project to be funded from Rural Improvement monies must be located in an area which has a population of less than 50,000 individuals.

2. The State, and political subdivision of the State, or any local entity as may be approved by the Division of Local Government of the Budget and Control Board, may apply for Rural Improvement funds, provided the project for which the application is made meets the other criteria set forth in these regulations. Before approving an application, the Division of Local Government of the Budget and Control Board shall determine that the entity is qualified to receive such funds, is fully capable of carrying out or completing the project for which funds are requested and maintains accounts and records which may be audited to determine that allocated funds are expended for the stated purpose.

### **19-502. Method of Application.**

An application for Rural Improvement funds must be submitted in writing on forms prescribed by the Division of Local Government of the Budget and Control Board.

### **19-503. Monitoring Process.**

Successful applicants must agree to provide and/or make available to the Budget and Control Board or its agents such books, records or accounting information as may be necessary for the performance of

an audit of any and all aspects of the project for which Rural Improvement funds have been made available.

**ARTICLE 7**  
**DIVISION OF HUMAN RESOURCE MANAGEMENT**  
**SUBARTICLE 1**  
**OFFICE OF HUMAN RESOURCES, STATE HUMAN RESOURCES REGULATIONS**

(Statutory Authority: 1976 Code §§ 8-11-41, 8-11-230, 8-11-240, 8-11-680)

**19-700. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CLASSIFICATION PLAN** - the classification plan as authorized by § 8-11-230 which includes the non-Higher Education classification plan and the Higher Education classification plan authorized by the Higher Education Efficiency and Administrative Policies Act of 2011.

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

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

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

**CLASS TITLE** - the name assigned to a class by the Division of State Human Resources.

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

**COMPENSATION** - monetary payment for services rendered.

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

**CONTINUOUS STATE SERVICE** - service with one or more State agencies without a break in service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**LEAVE ACCRUAL DATE** - the date used to calculate an employee's rate of annual leave earnings, which includes: (1) all State service in an FTE position, including part-time service, adjusted to reflect periods where there was a break in service; and, (2) all service as a certified employee in a permanent position of a school district of this State.

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

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

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

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

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

**DIVISION OF STATE HUMAN RESOURCES (DSHR)** formerly referenced as the Office of Human Resources (OHR) - the central State human resources entity under the Department of Administration.

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

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

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

**PERSONNEL NUMBER (PERNR)** - the employee identification number

**PERSONAL EMERGENCY** - a catastrophic and debilitating medical situation, severely complicated disability, severe accident case, family medical emergency, or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

**POSITION** - those duties and responsibilities constituting a single job.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

**SHIFT DIFFERENTIAL** - the additional amount of pay awarded to employees who are assigned to an evening, night, weekend, rotating, or split-shift.

**STATE EMPLOYEE GRIEVANCE COMMITTEE** - the committee composed of State employees who are appointed by the Director of the Department of Administration and who conduct hearings involving appeals filed by covered employees.

**STATE HIRE DATE** - the first date of State employment in an FTE position adjusted to reflect periods when there were breaks in service.

**STATE HUMAN RESOURCES DIRECTOR** - the head of the Division of State Human Resources of the Department of Administration, or his designee who is responsible for statewide coordination of human resources programs.

**STATE SALARY RANGE** - the dollar amount between the minimum and maximum rates of pay as established by DSHR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-701. GENERAL RULES.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.01. EQUAL EMPLOYMENT OPPORTUNITY.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.02. CONSTRUCTION OF WORDS.**

All words in these Regulations referencing the masculine gender shall apply to females as well. All words in these Regulations referencing "written," "in writing," or similar language shall also apply to electronic documents.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.03. STATE AND FEDERAL LAWS.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.04. AUDITS BY THE DIVISION OF STATE HUMAN RESOURCES (DSHR).**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.05. CENTRAL HUMAN RESOURCES DATA SYSTEM.**

As required by § 8-11-230 of the South Carolina Code of Laws, DSHR provides a central database to maintain human resources data on all employees. To maintain the integrity and completeness of the system, all agencies are required to submit appropriate information in a timely manner.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.06. ETHICS ACT.**

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

#### **A. Employment of Family Members**

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

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

#### **B. Conflict of Interest**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.07. EMPLOYMENT OUTSIDE OF STATE GOVERNMENT.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.08. SOLICITATION AND DISTRIBUTION.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.09. PILOT PROGRAMS TO CREATE INNOVATION IN STATE GOVERNMENT.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-701.10. FTE POSITIONS.**

An employee may not occupy more than one FTE position.

**HISTORY:** Added by State Register Volume 34, Issue No. 5, eff May 28, 2010. Amended by State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-702. CLASSIFICATION PLAN.**

### **SCOPE AND PURPOSE**

This Regulation governs the establishment, maintenance, and administration of the Classification Plan as defined in 19-700 applicable to all positions in the classified service.

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-702.01. STATEMENTS OF POLICY.**

A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the Classification Plan.

B. The Division of State Human Resources (DSHR) shall establish the Classification Plan to consist of (1) all approved classes of positions, (2) the allocation of each position to its proper class, (3) the class specifications for all approved classes of positions, and (4) the Regulations and procedures governing the administration of the Classification Plan.

C. A class shall be established for each broad category of work and its level of difficulty and responsibility.

D. Each class shall be defined by a class specification and shall be assigned to an appropriate pay band.

E. The Division of State Human Resources will maintain a list of approved classes.

F. No action shall be taken to fill any position until it has been authorized by the General Assembly and established in accordance with the Classification Plan. When establishing a classified position, DSHR assigns a position number, class title, class code, slot number, and pay band.

G. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized full-time equivalent (FTE) positions. (*Refer to Section 19-704.08.*)

H. The Division of State Human Resources is authorized to delegate to agencies by written agreement classification programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.

I. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-702.02. ADMINISTRATION OF THE PLAN.**

A. The State Human Resources Director shall administer the Classification Plan.

B. Before an agency fills or alters a position, DSHR must approve the following actions:

1. The initial classification of the position;
2. The reclassification of the position; or
3. The creation of new classes and the revision or abolishment of existing classes.

C. The Division of State Human Resources shall coordinate periodic studies to ensure that the Classification Plan is current and uniform.

D. As requested, agencies must submit to DSHR all current position descriptions, organizational charts, and other information as needed to administer the classification plan.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-702.03. CLASS SPECIFICATIONS.**

A. Each class specification shall describe in general terms examples of the kind of work and level of responsibility normally assigned positions that may be allocated to the class. The exact duties and responsibilities of positions allocated to any one class may differ; however, all positions allocated to a class shall be sufficiently similar as to kind of work, level of difficulty or responsibility, and qualification requirements.

B. The Division of State Human Resources shall develop class specifications which include the following:

1. Class Title and Code
2. General Nature of Work - the brief statement summarizing the work to be performed by individuals in this class.
3. Guidelines for Class Use/Distinguishing Characteristics - the brief statement summarizing the level of work performed, the breadth of job responsibilities, and level of supervision given or received. This section may be omitted if it is not needed for further clarification.
4. Examples of Work - statements of duties that reflect responsibility common to positions in the class, but not necessarily fully descriptive of any one position in the class.
5. Knowledge, Skills and Abilities - a list of individual characteristics each of which is required for the successful performance of one or more job duties of the class, but not necessarily fully descriptive of the requirements for any one position in the class.
6. Necessary Special Requirements - statements of professional or physical requirements, such as licensure or certification, which may be mandatory for some or all positions in the class. This section may be omitted if it is not needed for further clarification.
7. Minimum Requirements - a statement of the minimum combination of education and experience required for the satisfactory performance of the duties of positions in the class, but not necessarily fully descriptive of the education and experience required for any one position in the

class. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.

C. Current class specifications shall be maintained by DSHR. The Division of State Human Resources will notify agencies of any revisions and additions to the class specifications.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-702.04. POSITION DESCRIPTIONS.**

A. The Division of State Human Resources shall develop a position description to be used by agencies in describing assigned duties and other information necessary to determine the proper classification of each position. An agency may develop a position description which must be approved by DSHR prior to implementation.

B. The position description shall serve as a record of the duties assigned to an individual position in a class. The position description is used to compare positions to ensure uniformity of classification and as a basis for other human resources decisions.

C. The position description shall include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position, the percentage of time normally devoted to each duty, and the designation of essential and marginal functions.

D. Position descriptions should be updated to reflect any changes in the assigned job duties and responsibilities or any other pertinent information concerning the position. The supervisor should discuss this updated position description with the employee.

E. Agencies shall submit current position descriptions to DSHR. Current position descriptions shall be maintained by both the agency and DSHR.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-702.05. RECLASSIFICATION OF POSITIONS.**

A. An established position may be reclassified from one class to a different class as a result of a natural or an organizational change in the duties or responsibilities of the position.

B. When reclassifying a filled position, the assignment of new duties or responsibilities should not have the effect of creating a new position.

C. The Division of State Human Resources shall approve all reclassifications.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-702.06. POSITION NUMBERING SYSTEM.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-703. JOB VACANCY ANNOUNCEMENTS.**

##### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-703.01. STATEMENTS OF POLICY.**

A. The Department of Administration designates the Division of State Human Resources(DSHR)to administer all policies and procedures relating to the South Carolina Code of Laws, § 8-11-120, Report of Job Vacancies.

B. Applicants selected for hiring must meet the minimum requirements of the class as established by DSHR unless the State Human Resources Director has approved an equivalency.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-703.02. REPORT OF JOB VACANCIES.**

A. In addition to any other requirement provided by law, when a job vacancy occurs in any state office, agency, department, or other division of the executive branch of state government, the appointing authority must post a notice with the Division of State Human Resources of the Department of Administration and the South Carolina Department of Employment and Workforce at least five working days before employing a person to fill the vacancy. The posting must give notice of the job vacancy, describe the duties to be performed by a person, employed in that position and include any other information required by law.

B. The notification of a vacancy must include the following data:

1. The title of the position and a summary description of the job responsibilities for the vacant position if needed for clarification;
2. The entry salary or State salary range for the vacant position;
3. The name of the agency where the vacant position exists;
4. A description of the application process for the vacant position;
5. Residency requirements, if any, for the vacant position;
6. The class code and the position number of the vacant position;
7. The minimum requirements for the vacant position, as well as preferred qualifications, if any:
  - a. For the purpose of reporting a job vacancy, minimum requirements are the minimum training and experience requirements that are established by the agency for the vacant position. An agency's minimum training and experience requirements shall be either the minimum requirements that DSHR has established for the class or additional requirements established by the agency that are directly related to the successful performance of essential job functions as described on the position description. Any additional requirements must exceed the minimum requirements that DSHR has established for the class.
  - b. Preferred qualifications are defined as any other qualifications that are desirable, but not mandatory, for the performance of essential job functions upon entry into the position;
8. The opening and closing dates for applying for the vacant position;
9. A statement certifying that the employing agency is an equal employment opportunity/affirmative action employing agency; and
10. The normal work schedule and whether the position is full-time or part-time.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-703.03. INTERNAL POSTING AND DISTRIBUTION OF ANNOUNCEMENTS.**

The agency must notify employees where the vacancy exists. If the vacancy is a promotional opportunity that requires work experience within the agency to qualify for the promotion, notice of the vacancy must be posted for five workdays, and the notice does not have to be sent to the South Carolina Department of Employment and Workforce or to the Division of State Human Resources.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-703.04. EXEMPTIONS TO POSTING JOB ANNOUNCEMENTS.**

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

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-703.05. FREEDOM OF INFORMATION ACT REQUESTS.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-704. MOVEMENT AND STATUS.**

#### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-704.01. STATEMENTS OF POLICY.**

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

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

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

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

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

D. A person who moves into or between an FTE position(s) in the classified system must meet minimum requirements established in the class specification. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.

E. When a person moves into or between an FTE position(s) or when an employee's position is reclassified or has an unclassified State title change, the following types of status apply:

1. Probationary - The status of a full-time or part-time employee occupying all or part of an FTE position in the initial working test period of employment with the State of:
  - a. Twelve months' duration for noninstructional personnel;
  - b. The academic year duration for instructional personnel (teachers); or
  - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. Covered - The status of a full-time or part-time employee occupying all or part of an FTE position who has completed the probationary period and has a "meets" or higher overall rating on



the employee's performance evaluation and has grievance rights. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee.

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

F. Permanent Status in a Class or Unclassified State Title

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

G. Performance Review Dates

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-704.02. INITIAL EMPLOYMENT OR REEMPLOYMENT.**

A. Initial employment is defined as the employment of a person newly hired into State government in a classified or unclassified FTE position.

B. Reemployment is defined as the employment of a person following a break in service in a classified or unclassified FTE position.

C. Probationary Status

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

D. Probationary Period

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

- a. Twelve months' duration for noninstructional personnel;
- b. The academic year duration for instructional personnel (teachers); or
- c. Not more than two full academic years' duration for faculty at State technical colleges.

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

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-704.03. PROMOTION.**

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

1. Having a higher State salary range; or
2. For positions without a State salary range, having a higher rate of pay.

B. Probationary or Trial Status

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

C. Probationary Period

1. An employee in probationary status who is promoted must complete a probationary period of:

- a. Twelve months' duration for noninstructional personnel;
- b. The academic year duration for instructional personnel (teachers); or

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

D. Trial Period

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-704.04. DEMOTION.**

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

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

B. Probationary or Trial Status

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

C. Probationary Period

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

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

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

D. Trial Period

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-704.05. REASSIGNMENT AND TRANSFER.**

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

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

C. Probationary or Trial Status

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

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

D. Probationary Period

1. An employee in probationary status who is reassigned or transferred must complete a probationary period of:

- a. Twelve months' duration for noninstructional personnel;
- b. The academic year duration for instructional personnel (teachers); or
- c. Not more than two full academic years' duration for faculty at State technical colleges.

2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period. If the reassignment or transfer is not to a new class or unclassified State title, the employee's probationary period shall not change.

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

E. Trial Period

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-704.06. RECLASSIFICATION.**

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

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

1. Probationary or Trial Status

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

2. Probationary Period

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

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

3. Trial Period

A covered employee who is reclassified upward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90

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

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

1. Probationary or Trial Status

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

2. Probationary Period

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

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

3. Trial Period

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

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

1. Probationary or Trial Status

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

2. Probationary Period

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

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

3. Trial Period

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-704.07. UNCLASSIFIED STATE TITLE CHANGES.**

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

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

### 1. Probationary or Trial Status

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

### 2. Probationary Period

a. An employee in probationary status whose position is moved upward must complete a probationary period of:

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

### 3. Trial Period

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

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

### 1. Probationary or Trial Status

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

### 2. Probationary Period

a. An employee in probationary status whose position is moved downward must complete a probationary period of:

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

### 3. Trial Period

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

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

1. Probationary or Trial Status

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

2. Probationary Period

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

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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

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

3. Trial Period

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-704.08. MOVEMENT BETWEEN CLASSIFIED SERVICE AND UNCLASSIFIED SERVICE.**

A. Classified Service to Unclassified Service

1. Movement of the Employee

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

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

2. Movement of the Position

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

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

B. Unclassified Service to Classified Service

1. Movement of the Employee

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

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

2. Movement of the Position

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

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-705. CLASSIFIED EMPLOYEE PAY PLAN.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-705.01. STATEMENTS OF POLICY.**

A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the Pay Plan.

B. The Division of State Human Resources (DSHR) shall establish and maintain a Pay Plan to consist of (1) the official classification listing, (2) the official pay bands, and (3) the Regulations and procedures governing the administration of the Pay Plan.

C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the State Fiscal Accountability Authority. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.

D. The Division of State Human Resources is authorized to delegate to agencies by written agreement pay programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.

E. When an employee moves from an unclassified position to a classified position, the employee's pay will be governed by the classified pay plan.

F. An agency requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.

G. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.

H. An agency shall maintain documentation appropriate for the administration of this Regulation.

I. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.

J. The State Human Resources Director shall have the authority to make exceptions to Section 19-705.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-705.02. ADMINISTRATION OF THE PAY PLAN.**

A. The Division of State Human Resources periodically shall conduct studies for the purpose of making recommendations that will maintain a competitive Pay Plan.

B. An employee shall be paid within the pay bands in accordance with the provisions of this Regulation.

C. An employee shall not be paid in excess of the maximum of the pay band for a class, unless such payment is authorized by this Regulation.

D. Any pay action which requires approval from DSHR must receive such approval prior to an agency effecting the action.

E. Prior to submission to DSHR for approval, the agency human resources shall review all proposed pay changes to determine that they are in compliance with the provisions of this Regulation.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-705.03. HIRING SALARIES.**

A. Hiring at the Minimum - An employee must be paid at least the minimum of the pay band for the class to which hired.

B. Hiring Above the Minimum

1. Exceptional Qualifications - If an individual is exceptionally qualified for the position, DSHR may authorize a salary for the individual at a rate above the minimum of the pay band for the class based on written justification submitted by the agency.

2. Special Hire Rate - Based on written justification submitted by the agency, the Division of State Human Resources may approve a special hire rate when experience has shown that recruitment of qualified applicants for selected positions in a class has not been possible at the minimum of the pay band.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-705.04. SALARY INCREASES.**

A. Agencies shall develop written policies to govern the administration of salary increases for employees.

B. Legislative Increase - General and Merit Increases shall be provided to employees in accordance with the provisions of the annual Appropriation Act.

C. In-Band Salary Increase - Written justification for awarding an in-band salary increase shall be maintained by the employing agency. An employee's salary may be increased within his current pay band for the following reasons:

1. Performance Increase - An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the pay band.



2. Additional Skills or Knowledge Increase - An in-band increase may be granted when an employee gains additional skills or knowledge directly related to the job. An employee's salary may be increased by up to 15% for the acquisition of additional skills or knowledge, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

3. Additional Job Duties or Responsibilities Increase - An in-band increase may be granted when an employee is assigned additional job duties or broader responsibilities, either within his current position or as a reassignment to another position in the same pay band in the employing agency. An employee's salary may be increased by up to 15% for the recognition of the additional job duties or responsibilities, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval. Should the additional job duties or responsibilities be removed from the employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of the additional job duties or responsibilities increase. *(For removal of additional job duties or responsibilities, refer to Section 19-705.05 B. 2.)*

4. Transfer Increase - An in-band increase may be granted when an employee accepts a position within another agency which is in the same pay band as his current position. An employee's salary may be increased by up to 15% for the recognition of a transfer, provided such increase does not place the employee's salary above the maximum of the pay band.

5. Retention Increase - An in-band increase may be granted when an employee has a bona fide job offer from another employer, either within or outside of State government, and an agency wishes to retain the services of this employee in his current position. An employee's salary may be increased by up to 15% for the purpose of retention, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15% for employees who have bona fide job offers outside of State government, the agency must submit written justification to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period.

D. Salary Increases Resulting from Upward Band Changes - An employee's salary may be increased as a result of movement to a higher pay band for the following reasons:

1. Promotional Increase

a. Upon promotion, the employee must be paid at least the minimum of the pay band of the class to which promoted.

b. Upon promotion, an employee's salary may be increased by up to 15% of his salary prior to promotion, or to the midpoint of the new pay band, whichever is greater. For an increase of more than 15% and above the midpoint of the pay band, the agency must submit written justification to DSHR for approval. Such increase shall not place the employee's salary above the maximum of the new pay band.

2. Reclassification Increase

a. When an employee's position is reclassified to a class with a higher pay band, the employee's salary shall be increased to at least the minimum of the pay band of the class to which reclassified.

b. Upon reclassification, an employee's salary may be increased by up to 15% of the salary prior to reclassification, provided such increase does not place the employee's salary above the maximum of the new pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

3. Reallocation Increase - When DSHR reallocates a class to a higher pay band:

a. An employee in that class shall receive a salary increase at least to the new minimum of the new pay band; or

b. An employee in that class may receive up to a 15% salary adjustment provided such increase does not place an employee's salary above the maximum of the new pay band.

E. An employee is not eligible to receive a salary increase upon downward reclassification or demotion.

F. Return from Leave Without Pay - An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that

the employee shall be granted any legislative increases authorized during the employee's leave of absence. In determining the amount of adjustment that the employee shall be granted, the same implementation instructions that applied to all employees in that class shall be followed.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-705.05. SALARY DECREASES.**

A. Agencies shall develop written policies to govern the administration of salary decreases for employees.

B. In-Band Salary Decreases - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased within his current pay band for the following reasons:

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

2. Removal of Additional Job Duties or Responsibilities

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

3. Assignment of Lower Level Responsibilities

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

b. Involuntary Reason - A covered employee who is involuntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, shall not have his salary reduced for a period of six months from the date of the action unless an exception is approved by the Department of Administration or his designee. After the expiration of the six-month period, with the approval of the agency head, or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily assigned lower level responsibilities, may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately following the assignment of lower level responsibilities.

If the employee's salary is allowed to remain above the maximum of the pay band, the employee shall not be eligible for pay increases unless:

(1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or

(2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.

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

1. Demotion and Downward Reclassification Decreases

a. Voluntary Reason - An employee who voluntarily has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head or his designee, be paid at a salary equal to or below the current salary. However, the

rate must be within the lower pay band and the employee must sign a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

b. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head, be paid at a rate equal to or below the current salary, but within the lower pay band.

c. Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reclassified to a class in a lower pay band for these reasons, the employee's salary shall not be reduced for a period of six months from the date of the demotion or downward reclassification unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or downwardly reclassified may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately following the demotion or downward reclassification.

If the employee's salary is allowed to remain above the maximum of the lower pay band, the employee shall not be eligible for pay increases unless:

(1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or

(2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.

d. An employee who is promoted or his position is reclassified upward, and subsequently demoted or his position is reclassified downward prior to attaining permanent status in a class of a higher pay band, shall have a reduction in pay as follows:

(1) When an employee is demoted or his position is reclassified to the previous class or to a class with the same pay band held prior to promotion or reclassification, or to a class with a lower pay band, the employee's salary will be reduced by the amount previously received upon promotion or upward reclassification provided the salary will not exceed the maximum of the pay band for the class to which demoted or downwardly reclassified.

(2) When an employee is demoted or his position is reclassified downward to a class having a higher pay band than the original position, the employee's salary will be reduced by the amount previously received upon promotion or reclassification and the employee's new salary will be established in accordance with Section 19-705.04 D.

## 2. Downward Band Reallocation

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

a. Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or

b. The employee is subsequently promoted or his position is reclassified, and his current rate of pay is below the maximum of the pay band for the class to which promoted or reclassified.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## 19-705.06. SPECIAL SALARY ADJUSTMENTS.

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-705.07. COMPENSATION NOT INCLUDED IN BASE SALARY.**

A. Temporary Salary Adjustment - The Division of State Human Resources is authorized to approve a temporary salary adjustment for an employee in a full-time equivalent (FTE) position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

B. Shift Differential Pay - The Division of State Human Resources may approve the additional payment of a shift differential for classifications of employees in the entire agency or any portion of the agency assigned to an evening, night, weekend, rotating, or split shift. To qualify the shift for approval, the majority of hours of the shift must be outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The employee's pay shall be adjusted by the amount approved, even if such amount increases the employee's salary above the maximum of the pay band for the class.

C. On-Call Pay - On-call pay is pay by the employing agency for classifications of employees in the entire agency or any portion of the agency to remain available to return to work within a specified period of time. The Division of State Human Resources must approve on-call pay for employees.

D. Call Back Pay - Call back pay is pay by the employing agency for an employee to report to work either before or after normal duty hours to perform emergency services. Each agency shall determine which groups of employees shall be subject to call back. Nonexempt employees shall be compensated for hours worked as a result of a call back at their regular hourly rate plus any shift differential for which they might be eligible and such time shall be counted in computing any overtime that may be due. When an employee to be called back for emergency services which require less than two hours on the job, or when no work is available when he reports, the employee shall be compensated a minimum of two hours. An employee shall not receive call back pay if:

1. The call back has been canceled and the employee received notice in advance not to report to work, or
2. The employee refuses alternate work that is offered upon reporting to work.

E. Special Assignment Pay - The Division of State Human Resources may approve additional compensation to classifications of employees in the entire agency or any portion of the agency for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by DSHR.

F. Market or Geographic Differential Pay - The Division of State Human Resources may approve Market or Geographic Differential Pay for classifications of employees in the entire agency or any portion of the agency for periods of time when circumstances warrant such approval.

G. Bonuses - The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Department of Administration in the administration of bonus programs.

### H. Longevity Pay

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

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

I. Grant Salary Adjustment - The Division of State Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-705.08. EFFECTIVE DATES OF SALARY CHANGES.**

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

B. Retroactivity

Agencies must comply with Article III, § 30 of the South Carolina Constitution regarding retroactivity.

C. Concurrent Increases

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

2. When performance pay increases under § 8-11-940 of the South Carolina Code of Laws and salary increases other than general increases are awarded on the same date, the performance pay increases shall be applied prior to any other salary increases.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

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

#### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-706.01. CATEGORIES OF UNCLASSIFIED POSITIONS.**

A. An unclassified position is a full-time equivalent (FTE) position that has been assigned to an unclassified State title and falls under one of the following categories: 1) agency head covered by the Agency Head Salary Commission, 2) Executive Compensation System, 3) academic personnel, or 4) unclassified other.

B. The compensation of agency heads covered by the Agency Head Salary Commission is addressed in Section 19-706.04 A.

C. The compensation of employees in positions covered by the Executive Compensation System is governed by Section 19-706.04 B.

D. Academic personnel are defined by § 8-11-220 of the South Carolina Code of Laws as “presidents, provosts, vice presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning, or medical institutions of education and research.” The compensation of employees in positions in the category of academic personnel is governed by Section 19-706.04 C. Presidents who are covered by the Agency Head Salary Commission are not subject to the Regulations pertaining to academic personnel.

E. Positions in the category of Unclassified Other include:

1. Agency heads not covered by the Agency Head Salary Commission;
2. Staff of the Governor’s office;
3. Teachers;
4. Such other personnel employed by the institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the Department of Administration;
5. Other positions as the General Assembly may elect to exempt.

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

**HISTORY:** Amended by State Register Volume 8, Issue No. 6, eff June 22, 1984; State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-706.02. STATEMENTS OF POLICY.**

A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the unclassified State titles and compensation of employees in unclassified positions.

B. The Division of State Human Resources shall develop and maintain a position numbering system that will identify each unclassified position.

C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the State Fiscal Accountability Authority. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.

D. All pay actions which require approval from DSHR must receive such approval prior to an agency effecting the actions.

E. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.

F. All employees in unclassified positions with State salary ranges shall be paid within their respective range and the provisions of Section 19-706.

G. An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee may be granted any legislative increases made during the employee's absence. In determining the amount of adjustment that the employee may be granted, the same implementation instructions that applied to all other employees in the same unclassified category shall be followed.

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

I. When an employee moves from a classified position to an unclassified position, the employee's pay will be governed by the unclassified pay plan.

J. The Division of State Human Resources is authorized to delegate to agencies by written agreement the establishment of unclassified positions within authorized limits and changes to the unclassified State title. Agencies with a delegation agreement shall comply with State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.

K. An agency's requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.

L. An agency shall maintain documentation appropriate for administration of these Regulations.

M. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.

N. The State Human Resources Director shall have the authority to make exceptions to Section 19-706.

**HISTORY:** Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 8, Issue No. 6, eff June 22, 1984; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-706.03. ADMINISTRATION OF THE PAY PLAN.**

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

B. An unclassified position should be authorized by the General Assembly and established by DSHR. When establishing an unclassified position, DSHR assigns a position number, unclassified State title and code, slot number, and State salary range, if applicable.

C. The Division of State Human Resources has the authority to designate a classified position as unclassified for purposes of initially placing positions in the Executive Compensation System.

D. The Division of State Human Resources may, as appropriate, conduct studies of unclassified positions with State salary ranges for the purpose of making recommendations that will maintain a competitive pay plan.

E. The State Human Resources Director is authorized to approve pay actions outside the provisions of Section 19-706 for employees other than agency heads if circumstances warrant such approval.

**HISTORY: Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 8, Issue No. 6, eff June 22, 1984; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

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

#### **A. Agency Heads Covered by the Agency Head Salary Commission**

The compensation of agency heads covered by the Agency Head Salary Commission is governed by the Commission and the State Fiscal Accountability Authority.

#### **B. Executive Compensation System**

##### **1. Hiring Salaries for Employees in the Executive Compensation System**

a. Hiring at the Minimum - An employee must be paid at least the minimum of the State salary range for the position.

b. Hiring Above the Minimum - An employee may be hired at a salary up to the midpoint of the State salary range for the position if circumstances warrant such approval. The Department of Administration may authorize payment of a salary above the midpoint of the State salary range for the position based on written justification submitted by the agency.

c. Entry into the Executive Compensation System - Upon movement into the new position, the employee is eligible for up to a 15% salary increase or up to the midpoint of the State salary range for the new position, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Department of Administration may authorize exceptions based on written justification submitted by the agency.

##### **2. Salary Increases for Employees in the Executive Compensation System**

a. Written justification for awarding salary increases shall be maintained by the agency.

###### **b. In-Range Increases**

(1) Legislative Increase - An annual pay increase shall be provided to the Executive Compensation System employees in accordance with the provisions of the annual Appropriation Act.

(2) Performance Increase - An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such an increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the State salary range.

###### **c. Salary Increases Upon Promotion**

(1) Upon promotion, an employee's salary must be at least the minimum of the State salary range for the position to which promoted.

(2) Upon promotion an employee's salary may be increased up to 15% or up to the midpoint of the State salary range for the position to which promoted, whichever is greater. Such increase

shall not place the employee's salary above the maximum of the new State salary range. The Department of Administration may authorize exceptions based on written justification submitted by the agency.

d. Salary Increases Upon Upward Reevaluation

(1) When an occupied position is reevaluated and is assigned a higher State salary range, the employee's salary must be at least the minimum of the new State salary range.

(2) Upon an upward reevaluation, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range.

3. Salary Decreases for Employees in the Executive Compensation System

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

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

c. Salary Decreases Upon Demotion or Downward Reevaluation

(1) Voluntary Reason - An employee, who is voluntarily demoted to a position with a lower State salary range or who voluntarily has his position reevaluated to a lower State salary range, may at the discretion of the agency head or his designee, be paid at any salary equal to or below the current salary. However, the salary must be within the lower State salary range, and the employee must sign a written statement indicating agreement to the salary decrease. The signed document with justification should be maintained by the agency.

(2) Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or an unsatisfactory rating on an EPMS evaluation, has his position reevaluated to a lower State salary range or is demoted to a position with a lower State salary range, may, at the discretion of the agency head, be paid at any salary within the lower State salary range provided the salary is equal to or below the current salary, but must be within the lower State salary range.

(3) Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reevaluated to a lower State salary range for these reasons, the employee's salary shall not be reduced for a period of six months from the date of the demotion or downward reevaluation unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the State salary range, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or whose position is downwardly reevaluated may have his salary reduced no more than 15% or to the midpoint of the pay State salary range, whichever is lower, immediately following the demotion or downward reevaluation.

If the employee's salary is allowed to remain above the maximum of the lower State salary range for the position, the employee shall not be eligible for pay increases unless:

(a) Subsequent pay adjustments establish the maximum of the State salary range above the employee's rate of pay; or

(b) The employee is subsequently promoted or his position is reevaluated and his current salary is below the maximum of the State salary range for the position.

C. Academic Personnel

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

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

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



a. Agencies shall develop written policies to govern the administration of salary increases for academic personnel in unclassified positions. Written justification for awarding salary increases shall be maintained by the agency.

b. A legislative increase shall be provided to academic personnel in accordance with the provisions of the annual Appropriation Act.

c. Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

(1) The acquisition of additional skills or knowledge directly related to the job;

(2) The assignment of additional job duties or responsibilities;

(3) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period;

(4) The need to address internal equity or equity with the external market;

(5) Promotion to a higher level position - The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or

(6) Assignment of higher level job duties or responsibilities as defined by the agency which results in a change in unclassified State title.

d. As provided in an agency's faculty promotion policy, the agency may develop policies for rank promotions for faculty. Such increases shall be determined by the agency.

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

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

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

a. Performance or Disciplinary Decrease - An agency may decrease an employee's salary based upon performance or disciplinary reasons. Performance decreases should be based on the results of a performance evaluation. Any salary decrease shall be determined by the agency.

b. Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. For academic personnel covered by the State Employee Grievance Procedure Act, this decrease in salary is not grievable or appealable if the removal of the duties and subsequent salary decrease occur within six months of the date the salary increase was awarded. (Refer to Section 19-718.)

#### c. Demotion and Assignment of Lower Level Responsibilities

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

#### (2) Involuntary Reason -

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

i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on a performance evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

ii. An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of six months from the date of the action unless an exception is approved by the Department of Administration. After the expiration

of the six-month period, with the approval of the agency head, the employee's salary may not be reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

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

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

4. Administrative Salary Adjustment

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

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

a. Summer employment is not considered dual employment, which covers additional compensation earned during an employee's base period of employment. Therefore, summer employment may occur over any specified period of time between May and September of a calendar year.

b. All institutions of higher learning should develop policies and procedures for governing academic personnel who are teaching summer sessions outside of their base period of employment. Institutions of higher learning should consider comparable positions and market data for the occupational area when determining compensation for summer teaching. The rate of pay should be comparable to the preceding academic year and may not exceed 40% of the employee's annualized salary. Written justification for any exceptions should be submitted to DSHR for approval.

c. Academic personnel shall be compensated at the same rate of pay as the immediately preceding academic year for sponsored research or other activities performed during the summer months (between academic years) which are not related to a regular summer session.

d. Institutions of higher learning shall maintain records of all agreements pertaining to summer employment.

D. Unclassified Other

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

Agency heads not covered by the Agency Head Salary Commission shall have their salary established in accordance with relevant legislation.

2. Unclassified Other (Teachers)

Agencies shall pay all teachers the appropriate salary and any increases provided by the salary schedule of the school district in which the agency is located.

3. Unclassified Other (Non-Teachers)

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

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

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

(1) Written justification for awarding salary increases shall be maintained by the agency.

(2) A legislative increase shall be provided to employees in the category of unclassified other (non-teachers) in accordance with the provisions of the annual Appropriation Act.

(3) Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

(a) The acquisition of additional skills or knowledge directly related to the job;

(b) The assignment of additional job duties or responsibilities;

(c) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period;

(d) The need to address internal equity or equity with the external market;

(e) Promotion to a higher level position. The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or

(f) Assignment of higher level job duties or responsibilities which results in a change in unclassified State title.

(4) A performance increase may be awarded to an employee in accordance with § 8–1–160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.

c. Demotions and Salary Decreases for Employees in the Category of Unclassified Other (Non-Teachers)

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

(1) Performance Decrease - An agency may decrease an employee's salary based upon performance in accordance with § 8–1–160 of the South Carolina Code of Laws. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.

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

(3) Demotion or Assignment of Lower Level Responsibilities

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

(b) Involuntary Reason -

i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

ii. A covered employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of six months from the date of the action unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may not be reduced by more than 15%. An employee exempt from the State Employee Grievance Procedure Act, who is demoted or involuntarily assigned lower level responsibilities, shall not have his salary reduced by more than 15% immediately following the demotion or assignment of lower level responsibilities.

For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

**HISTORY:** Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 8, Issue No. 6, eff June 22, 1984; State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-706.05. COMPENSATION NOT INCLUDED IN BASE SALARY.**

A. Temporary Salary Adjustment - The Division of State Human Resources is authorized to approve a temporary salary adjustment for an employee in an FTE position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

B. Bonuses - The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Department of Administration in the administration of bonus programs.

C. Grant Salary Adjustment - The Division of State Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

D. Special Assignment Pay - The Division of State Human Resources may approve additional compensation to classifications of employees in the entire agency or any portion of the agency for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by DSHR

**HISTORY:** Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 8, Issue No. 6, eff June 22, 1984; State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-706.06. EFFECTIVE DATES OF SALARY CHANGES.**

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

B. Retroactivity

Agencies must comply with constitutional provisions regarding retroactivity.

C. Concurrent Increases

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

**HISTORY:** Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-707. HOURS OF WORK AND OVERTIME.**

#### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-707.01. HOURS OF WORK.**

A. No agency shall have less than a 37.5-hour workweek. Generally, the core hours that an agency shall remain open for business are 8:30 a.m. to 5:00 p.m., Monday through Friday.

B. The minimum full-time workweek for employees of agencies is 37.5 hours. The agency may vary an employee's work schedule through the use of alternative scheduling strategies including telecommuting to meet the needs and service delivery requirements of the agency.

C. The agency may require an employee to work additional hours when responsibilities of the agency cannot be accomplished in the normal work hours observed by the agency.

D. Each agency is required to keep an accurate record of all employee's scheduled hours of work and leave taken. Leave shall be recorded in the appropriate categories and shown as either leave with

or without pay. The agency head has the ultimate responsibility for the accuracy and proper maintenance of hours of work and leave records.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-707.02. OVERTIME - COMPENSATORY TIME**

A. The Division of State Human Resources (DSHR) develops an overtime model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's overtime policy.

B. Each agency shall develop an overtime policy and establish procedures that will ensure compliance with federal and state laws, including the Fair Labor Standards Act (FLSA).

C. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.

D. For overtime purposes the two categories of employees are: (a) nonexempt (overtime provisions of FLSA do apply) and (b) exempt (overtime provisions of FLSA do not apply). The exempt or nonexempt status of any employee must be determined by the agency based on the provisions of FLSA. It is the responsibility of the agency head or his designee to determine whether an exemption is applicable to a particular employee.

E. Workweek is seven consecutive 24-hour periods, i.e., 168 consecutive hours designated by the employing agency.

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

F. Hours worked are all hours that an employee is permitted to work for the employing agency. Hours worked include time during which an employee is necessarily required to be on the employing agency's premises, on duty, or at a prescribed work place. Hours worked do not include leave with or without pay or holidays when an employee does not actually work.

G. Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period as determined by the employing agency. The Fair Labor Standards Act contains special provisions for determining when overtime is earned by employees in certain job categories. These categories include:

1. Fire protection and emergency medical personnel;
2. Law enforcement (including security personnel in correctional institutions);
3. Hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the disabled that reside on the premises; and
4. Employees who are compensated for overtime using the fluctuating workweek method of payment for overtime as defined by FLSA which must be approved by DSHR prior to implementation.

H. Generally, a nonexempt employee should not incur overtime; however, overtime may be permitted when authorized by the agency.

I. Compensatory time is an acceptable alternative to overtime compensation for employees.

1. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time, and exempt employees shall not be paid for unused compensatory time. Nonexempt employees shall be paid out for any unused compensatory time prior to transferring to another agency.

2. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time at a rate of compensation not less than the higher of:

- a. The average regular rate received by such employee during the last three years of the employee's employment, or
- b. The final regular rate received by such employee.

J. Nonexempt Employee Procedures

1. Payment for Overtime

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

## 2. Compensatory Time

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

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

## 3. Recordkeeping for Nonexempt Employees

Each agency must maintain the following information for nonexempt employees.

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

## K. Exempt Employee Procedures

### 1. No Payment for Overtime

Exempt employees shall not be paid overtime.

### 2. Compensatory Time

If allowed by an agency's overtime policy, exempt employees may receive compensatory time for hours worked in excess of 40 in the workweek. If granted, compensatory time must not be at a rate greater than one hour of compensatory time for each hour worked in excess of 40 in the workweek. Under no circumstances shall an exempt employee accumulate more compensatory time than FLSA allows for a nonexempt employee.

## L. Employment at More Than One State Agency

When a nonexempt employee is employed at more than one State agency, each employing agency shall calculate separately the hours worked by the employee. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purpose of applying FLSA; therefore, the agencies where the individual is employed should jointly determine whether such a

nonexempt employee is owed any overtime compensation during a workweek. *(For information on dual employment, refer to Section 19-713.)*

#### M. Volunteers

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-708. HOLIDAYS.**

#### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-708.01. ELIGIBILITY.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-708.02. LEGAL HOLIDAYS.**

##### State Holidays

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
George Washington's Birthday/President's Day	Third Monday in February
Confederate Memorial Day	May 10
National Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
Day after Christmas	December 26

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-708.03. HOLIDAY OBSERVANCE PROCEDURE.**

A. Holidays are to be taken on the prescribed day unless the agency requires the employee to work. The agency shall give employees who must work on holidays prior notice if possible.

B. When a holiday falls on a Saturday or Sunday, it shall be observed on the preceding Friday or the following Monday, respectively, by employees working a Monday through Friday schedule. Employees shall observe the holiday on the designated day or receive holiday compensatory time.

C. Employees in FTE positions who do not work a normal Monday through Friday workweek shall receive no more nor any fewer number of holidays than those employees who work the normal Monday through Friday workweek.

D. The length of an employee's holiday is computed based on the number of hours in the employee's average workday. To determine the number of hours in a holiday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

E. When a holiday falls during a period of leave with pay, that day will be counted as a holiday, not as a day of leave.

F. Employees who are on leave without pay the day before a holiday shall not be paid or receive holiday compensatory time for holidays falling during this period of leave without pay.

G. The holiday schedules of public colleges and universities, including technical colleges, shall not be in violation of this Section so long as the number of holidays provided in this Section are not exceeded.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-708.04. HOLIDAY COMPENSATORY TIME.**

A. An employee, except an employee of an agency following an academic schedule, who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within 90 days of such holiday.

B. An employee of an agency which follows an academic schedule who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within one year from the date of the holiday.

C. An employee who must work a portion of the holiday due to a shift that begins on one day and ends on another shall be granted holiday compensatory time equal to all hours worked on the holiday.

D. All nonexempt employees who are not allowed to take holiday compensatory time earned for working on a holiday within the 90-day period, or the one-year period in the case of employees who follow academic schedules, shall be compensated for the holiday by the employing agency at the straight hourly pay rate of the employee. Exempt employees shall not be paid for unused holiday compensatory time. An agency head or designee may extend the 90-day period for an additional 90 days because of limited staffing.

E. All nonexempt employees shall be compensated for all holiday compensatory time upon separation from employment. Nonexempt employees shall be paid out for any unused holiday compensatory time prior to transferring to another agency. Exempt employees shall not be paid for unused holiday compensatory time upon separation of employment.

#### **F. Holiday Compensatory Time Records**

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

1. Compensatory time earned and used in terms of hours; and



2. The number of hours per week the employee is normally scheduled to work and the employee's average workday.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-709. ANNUAL LEAVE.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-709.01. ELIGIBILITY.**

A. Annual leave shall be earned by and granted to:

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

B. This Regulation shall not apply to teaching personnel and officials of academic rank at institutions of higher learning.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-709.02. ANNUAL LEAVE EARNINGS.**

A. Computation

1. Employees who are in pay status one-half or more but not all of the workdays of the month shall earn annual leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no annual leave.

2. Employees shall earn annual leave while on annual leave, sick leave, or other authorized leave with pay. Employees shall not earn annual leave while on leave without pay.

3. Employees' annual leave earnings are computed based on the number of hours in the employee's workday.

4. Employees' annual leave earnings are based on the employee's leave accrual date. The leave accrual date reflects:

- a. All State service in an FTE position, including part-time service, adjusted to reflect periods when there was a break in service;
- b. All service as a certified employee in a permanent position of a school district of this State; and
- c. At the discretion of the agency head or his designee, all service in any temporary capacity counted towards the employee's probationary period. (*Refer to Section 19-704.02 D. 2.*)

B. Rate of Earnings

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

a. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

b. Service of Ten Years or Less

Employees on a five-day workweek schedule with service time of less than ten years shall earn annual leave at the rate of 1¼ workdays per month of service in each calendar year. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

c. Service of More Than Ten Years

Employees on a five-day per workweek schedule with State service time of more than ten years shall earn a bonus of 1¼ workdays of annual leave for each year of service over ten years. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

Chart #1

Five Days, 37.5 Hours Per Workweek Schedule

(may be rounded to the nearest two decimal places)

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

Chart #2

Five Days, 40 Hours Per Workweek Schedule

(may be rounded to the nearest two decimal places)

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

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

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

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

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

C. Maximum Accrual and Carryover

1. Employees shall be permitted to carryover from one calendar year to the next any unused annual leave up to a total accumulation of 45 workdays; EXCEPT THAT, employees of an agency which provided for maximum accumulation in excess of 45 workdays as of June 2, 1972, shall not forfeit the excess, but shall retain excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-709.03. USING AND SCHEDULING ANNUAL LEAVE.**

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

B. Scheduling Leave

1. To the degree possible, an employee's request for a specific period of annual leave shall be approved. Agencies may consider workloads and similar factors when reviewing the requests.

2. Agency approval is required for the specific periods the employee shall be on annual leave, to include beginning and ending dates and computation of total hours.

C. Maximum Days Used Per Year

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

2. Exception

a. For Family and Medical Leave Act or other disability related qualifying reasons, an agency may allow an employee who has used all eligible sick leave and 30 days of annual leave to use any remaining annual leave for:

- (1) Emergencies or serious health conditions of the employee;
- (2) Emergencies or serious health conditions of the employee's immediate family. (Immediate family is defined in Section 19-710.04 B. 6.)

b. For emergency or extreme hardship conditions as referenced in South Carolina Code of Laws § 8-11-670, the agency head or designee may allow an employee, who has used all

accumulated sick leave and thirty days of annual leave any remaining annual leave which he has accumulated.

c. An employee may request review by the State Human Resources Director the denial of the use of annual leave as provided in this Section.

D. Increments for Use of Annual Leave

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

E. Holiday During Leave

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

#### **19-709.04. TRANSFER FROM ONE STATE AGENCY TO ANOTHER.**

A. An employee who transfers without a break in service from one agency to another shall transfer earned annual leave.

B. When a full-time employee transfers to an agency that has a different workday, his annual leave at the transferring agency shall be converted to equivalent days of annual leave at the receiving agency.

C. When an employee transfers from a position in which he earns both sick and annual leave to a teaching position of academic rank at a State supported institution of higher learning, the employee shall be paid for earned annual leave according to Section 19-709.05.

D. When the employee with a maximum carryover in excess of 45 workdays transfers from one agency to another, the employee shall retain the higher maximum carryover at the receiving agency. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, the employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

#### **19-709.05. PAYMENT UPON SEPARATION FROM EMPLOYMENT.**

Upon separation from State employment, a lump sum payment will be made for unused annual leave, not to exceed 45 days, unless a higher maximum is authorized under Section 19-709.02 C., and without deducting any earned leave taken during the calendar year in which the employee separates. If the employee has not experienced a break in service, the agency shall not pay out any unused annual leave. However, an employee who transfers or is reassigned to a teaching position or position of academic rank at an institution of higher learning, as referenced in § 8-11-680 of the S.C. Code of Laws, should be paid out for any unused annual leave. Upon the death of an employee while in active service, the estate of the deceased employee shall be entitled to the lump sum payment not to exceed 45 days except as included in South Carolina Code of Laws § 8-11-610.

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

#### **19-709.06. RECORDS.**

A. The agency shall maintain all annual leave records for each employee eligible for annual leave. Such records must include at least the following:

1. The annual leave accrual rate for each employee;
2. The number of annual leave hours earned and used during the current calendar year;
3. The number of annual leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized;

4. The number of hours in the employee's workweek and workday; and
5. The number of hours paid out upon separation.

B. Annual leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by the individual leave requests.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-710. SICK LEAVE.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-710.01. ELIGIBILITY.**

Sick leave shall be earned by and granted to:

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-710.02. SICK LEAVE EARNINGS.**

#### **A. Computation**

1. Employees who are in pay status for at least one-half or more of the workdays of the month shall earn sick leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no sick leave.

2. Employees shall earn sick leave while on sick leave, annual leave, or other authorized leave with pay. Employees shall not earn sick leave while on leave without pay.

3. Employees' sick leave earnings are computed based on the number of hours in the employee's workday.

#### **B. Rate of Earnings**

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

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

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

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

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

d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

C. Maximum Accrual and Carryover

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

Exceptions

1. Any employee, who prior to January 1, 1969, earned and carried over unused sick leave in excess of 180 workdays pursuant to the agency's policy existing at the time, shall not forfeit the excess, but shall retain such excess leave which shall become the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover; or

2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the sick leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 180 workdays, as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 180 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover. During the calendar year, an employee may earn sick leave in excess of 180 workdays; however, an employee may only carry over 180 days into the next year.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-710.03. ADDITIONAL SICK LEAVE MAY BE GRANTED.**

A. An agency may advance up to 15 workdays of additional sick leave to an employee in extenuating circumstances.

B. The agency may advance this leave only upon documentation from a health care provider that the employee is expected to return to work within that period of time.

C. Upon return to work, the employee will have all earned sick leave applied to the leave deficit at the rate of 1 ¼ days per month (or if part-time, the monthly earning rate) until the deficit has been eliminated.

D. If an employee separates from employment before satisfying the leave deficit and returns to state employment, the leave deficit will need to be satisfied upon reemployment.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-710.04. USING AND SCHEDULING SICK LEAVE.**

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

B. Reasons an employee shall be allowed to use sick leave are as follows:

1. Personal illness or injury that incapacitates the employee to perform duties of the position;

2. Exposure to a contagious disease such that presence on duty could endanger the health of fellow employees;

3. Appointment for medical or dental examination or treatment when such appointment cannot reasonably be scheduled during nonwork hours;

[Note: if possible, examination appointments must be approved in advance by the agency designee.]

4. Sickness during pregnancy or other temporary disabilities;

[Note: If possible, the date on which sick leave for disability is to begin shall be at the request of the employee based on the determination and advice of a health care practitioner.]

5. Treatment for alcoholism;

[Note: In accordance with § 8–11–110 of the South Carolina Code of Laws which recognizes alcoholism as a treatable illness, sick leave will be granted for the purpose of participating in public and private treatment and rehabilitation programs which have been approved by the South Carolina Department of Mental Health.]

6. Caring for ill members of immediate family;

[Note: Employees earning sick leave as provided in Section 19–710 may not use more than ten days of sick leave annually to care for ill members of their immediate families. For purposes of this section, the employee's "immediate family" means the employee's spouse and children and the following relations to the employee or the spouse of the employee: mother, father, brother, sister, grandparent, legal guardian, and grandchildren.]

7. Caring for an adoptive child;

[Note: An adoptive parent who is employed by this State, its departments, agencies, or institutions may use up to six weeks of his earned sick leave to take time off for purposes of caring for the child after placement. The agency shall not penalize an employee for requesting or obtaining time off according to this Section. The leave authorized by this Section may be requested by the employee only if the employee is the person who is primarily responsible for furnishing the care and nurture of the child.]

C. Verification

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

D. Increments for Use of Sick Leave

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

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

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

F. Holiday During Sick Leave

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19–710.05. TRANSFER.**

A. Between State Agencies

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

B. Between A State Agency and School District

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-710.06. SEPARATION FROM EMPLOYMENT.**

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

A. Retirement - An employee who is a Class Two member of the South Carolina Retirement System or the Police Officer Retirement System shall receive service credit for no more than 90 days of his unused sick leave at no cost to the employee. The leave must be credited at a rate where 20 days of unused sick leave equals one month of service. This additional service credit may not be used to qualify for retirement.

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

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-710.07. RECORDS.**

A. The agency shall maintain all sick leave records for each employee eligible for sick leave. Such records must include at least the following:

1. The number of sick leave hours earned and used during the current calendar year;
2. The number of sick leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized; and
3. The number of hours in the employee's workweek and workday.

B. Sick leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-711. LEAVE TRANSFER PROGRAM.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Amended by State Register Volume 26, Issue No. 1, eff January 25, 2002; State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-711.01. AGENCY RESPONSIBILITY.**

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

#### **B. Records and Forms**

Each agency shall maintain the following records:

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



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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-711.02. ANNUAL REPORTING.**

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

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-711.03. ELIGIBILITY TO DONATE.**

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

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

#### **19-711.04. REQUEST FOR LEAVE.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-711.05. LEAVE APPROVAL.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-711.06. NO ADMINISTRATIVE OR JUDICIAL APPEAL.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-711.07. USE OF SICK OR ANNUAL LEAVE.**

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

B. Under guidelines established by the Department of Administration, the employing agency may transfer all or any portion of the sick leave in the pool account to the sick leave account of the leave recipient, and all or any portion of the annual leave in the pool account to the annual leave account of the leave recipient.

C. Upon approval of a request, an employee may use sick or annual leave from the appropriate pool account in the same manner and for the same purposes as if the employee had earned the leave in the manner provided by law.

D. Sick or annual leave earned by the leave recipient must be used before using any leave from a leave transfer pool.

E. Sick or annual leave transferred under this program may be substituted retroactively for periods of leave without pay or used to liquidate indebtedness for advanced sick leave.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-711.08. WHEN PERSONAL EMERGENCY TERMINATES.**

A. The personal emergency affecting a leave recipient terminates when either the employing agency determines that the personal emergency no longer exists or either the leave recipient separates from employment.

B. The employing agency shall monitor continuously the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred sick or annual leave from a pool account after the personal emergency terminates.

C. When the personal emergency terminates, the employing agency may not grant further requests for transfer of leave to the leave recipient's leave account. When the personal emergency affecting a

leave recipient terminates, any transferred sick or annual leave remaining must be restored to the appropriate pool account by completing a Leave Restoration Form.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-711.09. SEPARATION FROM EMPLOYMENT.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-712. OTHER LEAVE PROGRAMS.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-712.01. OTHER LEAVE TYPES.**

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

#### **A. Administrative Leave**

State employees in full-time equivalent (FTE) positions who are physically attacked while in the performance of official duties and suffer bodily harm as a result of the attack must be placed on administrative leave with pay by their employers rather than sick leave. The period of administrative leave for each incident may not exceed 180 calendar days. Denial of the use of administrative leave by the agency will be grounds for review by the Division of State Human Resources (DSHR) upon request of the employee. Administrative review by DSHR will be final.

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

#### **C. American Red Cross Certified Disaster Service Leave**

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

#### **D. Blood Drive and Donation Leave**

1. Agencies may periodically arrange volunteer blood drives for their employees. The blood drives may be held at the times and places as may be determined by the agency head. The agency's employees are permitted to participate in the blood drive during their work hours without using sick and annual leave.

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

#### **E. Bone Marrow Donor Leave**

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

#### F. Court Leave

##### 1. Jury Duty (With Pay)

a. An employee, who is summoned as a member of a jury panel, shall be granted court leave with pay. Any jury fees and travel payment shall be retained by the employee. This court leave with pay shall not apply to agencies whose employees are exempt from jury duty by law.

b. An employee, who is excused from jury duty and was not required to be at court the number of hours equal to the employee's workday, is required to return to the job according to arrangements between the employee and the agency designee. The employee must be on authorized leave for any time the employee is excused from jury duty and does not return to work.

c. An employee who is summoned to jury duty will be required to work on any given day only the number of hours that equal the employee's work schedule, minus the hours required to be at court.

##### 2. Subpoenaed As a Witness (With Pay)

An employee, who is subpoenaed as a witness and who will not receive any personal gain from the outcome of the litigation, shall be entitled to court leave with pay for those hours required for the subpoena and may retain any witness fee and travel expenses.

3. An employee, who is victim of or witness to a crime and must attend court in relation to the case or in order to obtain an Order of Protection or restraining order, shall receive court leave with pay.

##### 4. Exceptions

a. An employee engaged in personal litigation is not eligible for court leave with pay, but may be granted annual leave or leave without pay with appropriate authorization.

b. When an employee is subpoenaed to represent an agency as a witness or defendant, his appearance is considered a part of the employee's job assignment. The employee shall be reimbursed for any meals, lodging, and travel expenses that may be incurred according to the rules and regulations as provided by the Office of the Comptroller General.

c. When an employee attends, in an official capacity, a mediation or mediation-arbitration conference, his attendance is considered a part of the employee's job assignment.

d. When an employee appears as a witness or in any other official capacity in a hearing before the State Employee Grievance Committee, his appearance is considered a part of the employee's job assignment.

#### G. Death in Immediate Family Leave

1. An employee, upon request, shall be granted up to three consecutive workdays of leave with pay on the death of any member of the employee's immediate family. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, legal guardians, brothers, spouse of brothers, sisters, spouse of sisters, children, spouse of children, grandchildren, great-grandchildren of either the employee or the spouse.

2. An employee requesting leave for a death in the immediate family shall submit a statement to the appropriate authority stating the name of the deceased and the relationship to the deceased.

#### H. Educational Leave

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours and the agency cannot feasibly adjust the work schedule of the

employee, the employee may be allowed to take annual leave or may be granted leave without pay in order to attend classes.

#### I. Extended Disability Leave

Under the Americans with Disabilities Act (ADA), the Americans with Disabilities Act Amendments Act (ADAAA), and other applicable law, certain extended impairments may be protected as disabilities and may require reasonable accommodation. In certain cases, the use of leave may be considered a reasonable accommodation. Determinations regarding reasonable accommodations should be made on a case-by-case basis as dictated by the circumstances.

The agency shall require, prior to approval of leave as a reasonable accommodation, certification by the health care practitioner to a reasonable degree of medical certainty to include at a minimum: (a) the date on which the disability commenced; (b) the probable duration of the condition and a probable return date; and (c) appropriate medical facts within the knowledge of the health care practitioner regarding the condition and any work limitations. Dates set forth in the health care practitioner's certificate may be amended. The agency may require additional documentation from the health care practitioner issuing the certificate, or may secure additional medical opinions from other health care practitioners. If an employee's health care practitioner or the employee identifies a disability as long-term, the agency may suggest to the employee to contact the Public Employee Benefit Authority (PEBA) as soon as possible to evaluate eligibility for any appropriate benefits, such as insurance or retirement, if the employee believes it would be appropriate.

#### J. Family and Medical Leave Guidelines

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations. State government is considered a single employer for the purpose of determining FMLA leave.

##### 1. Eligibility and Reasons for FMLA Leave

a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours. The required total of 12 months of employment need not be consecutive. An agency can go back 7 years prior to the date of the need for leave to determine if the employee worked a total of 12 months with state government. An agency has the ability to go beyond 7 years if an employee left state employment due to National Guard or Reserve Military obligations or a written agreement reflecting an employer's intention to rehire after a break.

In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept.

b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:

- (1) For the birth of a son or daughter and to care for that child;
- (2) For placement of a son or daughter for adoption or foster care with the employee;
- (3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition; and
- (4) For a serious health condition that makes the employee unable to perform the functions of the employee's job.
- (5) For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation. Qualifying exigencies can include: 1) short notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post- deployment activities; and 8) additional activities not encompassed in other categories but agreed by the agency and the employee.

c. Under the military caregiver leave provisions, an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may be able to take up to a total of 26 workweeks in a single 12-month period to care for the service member.

Note: Reasons (1) and (2) for leave expires 12 months after the date of the birth or placement.

## 2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require documentation or certification from a health care provider supporting the need for FMLA leave for a serious health condition. Agencies may also require documentation for certification of serious health condition of a spouse, son, or daughter, a qualifying exigency or to confirm familial relationships.

## 3. Use of FMLA Leave

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

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

## 4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

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

## 5. FMLA Leave Record

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

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

## 6. Transfer of FMLA Leave

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

## K. Hazardous Weather and Emergency Leave

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

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

2. The Declaration may be applicable to all employees in the entire State, or only to those employees who live or work in one geographical region of the State, or a combination of geographical regions.

3. During a Declaration of Emergency, all essential and direct care services will be maintained. Each agency shall identify and notify essential employees by position, classification, or internal title. All other employees will not be expected to report to work.

### 4. Notification of Declaration of Emergency

Upon the communication of the Declaration of Emergency from the Governor's Office to the South Carolina Emergency Management Division, the South Carolina Emergency Management Division will communicate the Declaration of Emergency to each agency.

5. Compensation During Declaration of Emergency

Notwithstanding any other provisions of law, when the Governor declares a state of emergency for the State or any portion of the State, he can provide State employees with leave with pay for absences from work due to the state of emergency for hazardous weather of up to five days for each declaration of a state of emergency. In the event that the Governor does not provide State employees with leave with pay, an employee who does not report to work or who reports late to work shall use annual leave or compensatory time to make up hours scheduled but not worked, take leave without pay, or be allowed to make up the hours at a time to be scheduled by the agency. The employee must be given the option of making up the hours if the employee so desires.

L. Military Leave (Cross reference FMLA. Refer to Section 19-712.01 J. on qualifying exigencies.)

1. Short Term Military Training

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

A state employee in a full time position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to thirty additional work days of military leave in any one year.

2. Long Term Military Leave of Absence

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

M. Sabbatical Leave

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

N. State Employee Grievances and Appeals Attendance

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

O. Voting Leave

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

P. Workers' Compensation Leave

1. If there is an accidental injury arising out of and in the course of employment with the State, which is covered under Workers' Compensation, an employee who is not eligible for or who has exhausted his paid administrative leave, shall make an election to use either earned leave time (sick or annual or both) or Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws.

2. The employee shall make an election under one of the following options:

a. To use sick leave, annual leave, or both. When earned leave is exhausted before the employee can return to work, the employee shall be entitled to Workers' Compensation benefits at the time leave is exhausted;

b. To use Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws, as amended; or

c. To use sick leave, annual leave, or both on a prorated basis in conjunction with Workers' Compensation benefits according to the formula approved by the Department of Administration.

3. Before the election is made, the effect of each available option on the employee's future leave earnings must be explained to the employee by the employing agency. The election must be in writing and signed by the employee and the person who explains the options. The election of the employee is irrevocable as to each individual incident.

4. Regardless of which option an employee elects, he would continue to be eligible for payment of medical costs provided by the State Accident Fund.

#### Q. Organ Donor Leave

All officers and employees of this State who wish to be an organ donor and who accrue annual or sick leave as part of their employment are entitled to leaves of absence from their respective duties without loss of pay, time, leave, or efficiency rating for one or more periods not exceeding an aggregate of 30 regularly scheduled workdays in any one calendar year during which they may engage in the donation of their organs. Saturdays, Sundays, and State holidays may not be included in the 30-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. The officer or employee must show documentation from the attending physician of the proposed organ donation before leave is approved that confirms that the employee is the donor.

#### R. Leave of Absence

To grant any leave of absence with or without pay, the agency must approve the leave of absence. An employee who is granted leave of absence with or without pay shall be:

1. An employee of the State while on such leave; and

2. Returned to the same position, or one in a comparable pay band for which the employee is qualified.

Any leave of absence must be approved in advance except in case of medical or personal emergencies. These situations must be justified to the agency head or his designee for approval.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-712.02. OTHER LEAVE RECORDS.**

A. The agency shall maintain all leave records for each employee eligible for such leave. Such records must include the number of leave hours used during the current calendar year.

B. Leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-713. DUAL EMPLOYMENT.**

#### **SCOPE AND PURPOSE**



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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-713.01. STATEMENTS OF POLICY.**

### A. General Provisions

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

### B. Approval of Dual Employment

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

### C. Scheduling Dual Employment

#### 1. Dual Employment Between Two Agencies

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

#### 2. Dual Employment Within an Agency

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

### D. Compensation for Dual Employment

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

4. Payment of dual employment compensation shall be made in a timely manner. The secondary agency must make payment of funds approved for and earned under dual employment within 45 days of the beginning of the employment.

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

E. Dual Employment Recordkeeping

1. All dual employment requests must be in writing and contain the following information:

- a. Name of secondary agency;
- b. Description of services to be performed, beginning and ending dates of the dual employment, hours of work, and the FLSA status of the work to be performed for the secondary agency;
- c. Name of primary agency;
- d. Name of employee, State title of the employee's position, the FLSA status of the employee's position at the primary agency, present annualized salary of employee, and scheduled hours of work at the primary agency;
- e. Amount and terms of compensation, if applicable; and
- f. Signature of the agency heads or their designees, of both the secondary and the primary agencies, authorizing the dual employment as well as the signature of the employee.

2. For each dual employment arrangement, both the primary and secondary agency must maintain the written dual employment request. When the dual employment is within the same agency, that agency must maintain a written dual employment request for each dual employment arrangement.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-714. GOVERNMENT EMPLOYEES INTERCHANGE PROGRAM.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-714.01. STATEMENTS OF POLICY.**

A. The Department of Administration has delegated to the State Human Resources Director the authority to administer an Interchange of Government Employees Program as provided in § 8-12-60 of the South Carolina Code of Laws.

B. Agencies should refer to the Government Employees Interchange Program guidelines developed by the Division of State Human Resources (DSHR) for instructions on preparing an interchange agreement.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-715. EMPLOYEE PERFORMANCE EVALUATION SYSTEMS.**

### **SCOPE AND PURPOSE**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-715.01. STATEMENTS OF POLICY.**

A. The Division of State Human Resources (DSHR) shall develop an EPMS model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's EPMS policy which includes a Substandard Performance process.

B. Each agency shall develop an Employee Performance Management System that functions as an effective management tool within the agency, supports continuous communication between supervisors and employees, and provides a sound process for the evaluation of the performance and productivity of its employees.

C. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these Regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws.

D. An employee or an employee whose position is exempt from the State Employee Grievance Procedure Act is also exempt from the Employee Performance Management System. However, these employees may be given annual performance evaluations.

E. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-715.02. ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES.**

A. A performance review date is the first day which marks the beginning of a new review period. If an employee does not receive a performance evaluation prior to the performance review date, the employee shall receive a "meets performance requirements" rating by default.

B. In Probationary Status (*Refer to Section 19-704.*)

1. Upon initial employment or reemployment, the performance review date shall be established as:

- a. Twelve months from the date of an initial employment or reemployment;
- b. The academic year for instructional personnel; or
- c. Not more than two full academic years duration for faculty at State technical colleges.

2. The performance review date for a probationary employee who is promoted, demoted, reclassified, experiences an unclassified State title change, or is reassigned or transferred to a new class or unclassified State title shall be established as:

- a. Twelve months from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title change for non-instructional personnel;
- b. The academic year duration from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title for teachers; or
- c. Not more than two full academic years duration from the date of the promotion, demotion, unclassified State title change, or reassignment or transfer to another unclassified State title for faculty at State technical colleges.

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

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

1. A covered employee who is promoted, demoted, reclassified, reassigned, or transferred to a position or experiences an unclassified State title change in which he has not held permanent status in the class or unclassified State title shall have the performance review date reestablished six months from the date of the action.

2. An employee who is in a trial status and has had the trial period extended shall have the performance review date advanced up to 90 calendar days for the time period such extension is in effect.

3. Exception - An employee who is promoted and, prior to attaining permanent status in the class with a higher State salary range, or unclassified State title having a higher State salary range or higher level job duties or responsibilities, is demoted to the same class or unclassified State title from which promoted, shall retain the original performance review date established in the class with a lower State salary range, or unclassified State title having a lower State salary range or lower level job duties or responsibilities.

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

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

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

1. If an employee is on approved leave with or without pay for more than 30 consecutive workdays, the employee's performance review date may be advanced up to 90 days.

2. An employee who receives a "Warning Notice of Substandard Performance," may have the performance review date advanced to coincide with the "Warning Notice of Substandard Performance" dates.

3. An employee's performance review date may be adjusted due to promotions, demotions, reclassifications, reassignments, transfers, or unclassified State title changes, as provided in Section 19-715.

4. An employee who transfers to a position in the same class in another agency or is reassigned to a position in the same class and agency within six months or less of his review date shall have the performance review date advanced six months from the date of the transfer or reassignment.

5. An employee's performance review date may be adjusted when an agency adopts a universal performance review date in its written EPMS policy.

6. An employee, who is promoted or reclassified upward and prior to attaining permanent status in the class with a higher State salary range or in the unclassified State title having a higher State salary range or higher level of job duties or responsibilities, and is demoted or reclassified downward to the same class or unclassified State title from which promoted or reclassified upward, shall retain the original performance review date established in the class with a lower State salary range or unclassified State title having a lower State salary range or lower level of job duties or responsibilities.

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

1. An employee who transfers to a position in the same class in another agency or is reassigned to a position in the same class and agency who is more than six months from his review date shall not have the performance review date advanced six months from the date of the transfer or reassignment.

2. When a class is reallocated, an employee in that class shall not have the performance review date reestablished.

3. An employee who receives an in-band increase or decrease within the current class shall not have the performance review date reestablished.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

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

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

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

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

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

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

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

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

**19-716. STAFF DEVELOPMENT AND TRAINING.**

**SCOPE AND PURPOSE**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

**19-716.01. STATEMENTS OF POLICY.**

**A.** An agency may sponsor training for employees to improve or secure those skills necessary for the efficient and effective operations of the agency and to ensure uniformity in the administration of staff development and training programs throughout the State service.

**B.** The agency head or his designee shall be responsible for the administration of staff development and training within the agency.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

**19-716.02. EDUCATIONAL LEAVE.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

**19-716.03. REQUIRED COURSES.**

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

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-716.04. TUITION ASSISTANCE.**

A. Agencies may provide tuition assistance to employees based on the guidelines recommended by the Division of State Human Resources (DSHR) and approved by the Department of Administration.

B. When staff development and training needs cannot be accomplished within the Tuition Assistance Guidelines, the agency may submit a proposal to the Department of Administration for approval.

1. Approval of the proposal by the Department of Administration must precede the selection of employees for training. Each proposal shall include the following information:

- a. Program justification based on agency needs;
- b. Description of the courses;
- c. All classes and the number of positions in each class in the requested program;
- d. Fiscal year cost estimates for participation in the requested program; and
- e. A service commitment and payback agreement.

2. Except as provided above, any other forms of educational assistance for employees or non-employees may not be given by agencies unless authorized by statute or by the Department of Administration.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-717. DISCIPLINARY ACTIONS.**

### **SCOPE AND PURPOSE**

This Regulation governs the administration of progressive discipline for employees in full-time equivalent (FTE) positions.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-717.01. STATEMENTS OF POLICY.**

A. The Division of State Human Resources (DSHR) shall develop a progressive discipline model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's progressive discipline policy.

B. Each agency shall develop a progressive discipline policy and establish procedures that will ensure timely and equitable treatment of employees' behavioral deficiencies and breaches of conduct.

C. Whenever possible, coaching and counseling should precede any disciplinary action.

D. Each agency's progressive discipline policy should provide for the following types of disciplinary actions:

1. Oral Reprimand
2. Written Reprimand
3. Suspension
4. Termination

An agency may also use reassignments, reclassifications, unclassified State title changes, and demotions as types of disciplinary actions.

E. All suspensions shall be without pay.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-718. STATE EMPLOYEE GRIEVANCES AND APPEALS.**

### **SCOPE AND PURPOSE**

This Regulation sets forth the procedures for grievances and appeals under the State Employee Grievance Procedure Act (the Act), codified at § 8-17-310 through § 8-17-370 of the South Carolina Code of Laws, as amended.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-718.01. STATEMENTS OF POLICY.**

A. The Division of State Human Resources (DSHR) shall develop a grievance model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's grievance policy.

B. Each agency shall develop a grievance policy and establish procedures that will ensure timely and equitable treatment for the review of employee grievances.

C. All covered employees as defined in § 8-17-320 (7) of the South Carolina Code of Laws, as amended, are eligible to initiate a grievance or an appeal as specified in the Act. The State Employee Grievance Procedure Act does not apply to non-covered employees.

D. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these Regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws.

E. No employee shall be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the Act.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-718.02. INTERNAL AGENCY GRIEVANCE PROCEDURES.**

A. Each notice of an employment action by an agency that may constitute a grievance under the Act should be in writing. A voluntary acceptance of such an action on the part of a covered employee should also be in writing. The notice must advise the covered employee of the action taken and, except in cases where the action is voluntary as evidenced by a signed statement by the covered employee, should advise of the covered employee's right to initiate a grievance.

B. Each agency shall establish written internal agency grievance procedures. All provisions shall comply fully with the Act and, as provided for in the Act, be submitted to DSHR for approval.

C. Each agency shall ensure that each covered employee is afforded access to a copy of the agency's internal agency grievance procedures.

D. Each agency shall maintain documentation pertaining to grievances filed by employees. Such information must be made available upon request by DSHR.

E. Failure by the agency to issue a final decision within 45 calendar days is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-718.03. COVERED EMPLOYEES AND THEIR REPRESENTATIVES.**

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

B. Throughout the grievance and appeal process, each covered employee may be represented and advised by counsel or other representative or be self-represented as provided by § 8-17-330 of the South Carolina Code of Laws.

C. The Act exempts certain employees from its provisions as noted in § 8-17-370 of the South Carolina Code of Laws.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

## **19-718.04. GRIEVANCES.**

A. Grievable adverse actions shall include:

1. Terminations;
2. Suspensions;
3. Involuntary reassignments in excessive of thirty (30) miles from the prior work station;
4. Demotions;

5. Punitive reclassifications where the agency, in the case of a grievance, or the State Resources Director, in the case of an appeal, determines that there is a material issue of fact that the action was solely done to penalize the covered employee. However, reclassifications, reassignments, and transfers within the same state salary range are not considered to be grievable or appealable;

6. Promotions, in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, however, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered grievable or appealable;

7. Salary decreases based on performance as the result of an Employee Performance Management System (EPMS) evaluation; and

8. Reduction in Force but only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

B. A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action in accordance with the agency's grievance policy.

C. The following are some examples of employment actions that do not constitute a basis for a grievance or an appeal:

1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;

2. A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification;

3. A covered employee who is promoted, reclassified to a higher salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to completing the trial period in the class with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range or lower rate of pay than the position in which the employee was serving prior to promotion, reclassification, or movement to an unclassified position with a higher rate of pay;

4. A covered employee who is promoted or moved to an unclassified position with a higher rate of pay and subsequently receives a reduction in pay prior to completing the trial period in the



position with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to the promotion or movement to an unclassified position with a higher rate of pay;

5. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-718.05. APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR.**

A. If a covered employee is not satisfied with the agency's final decision concerning his grievance, he may appeal, after all administrative remedies to secure relief within the agency have been exhausted, to the State Human Resources Director who will determine whether to dismiss the appeal or remand or forward the appeal for further action.

B. A covered employee who wishes to appeal the final decision of the agency to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within 55 calendar days after the employee filed the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of receipt of the agency's final decision or 55 calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal. The time periods for an appeal to the State Human Resources Director may not be waived.

C. The Division of State Human Resources shall develop standard forms to be used in all appeal procedures.

D. Upon receipt of an appeal from a covered employee, the State Human Resources Director shall:

1. Acknowledge receipt of the appeal and require that the covered employee submit a standard appeal application form;

2. Upon receipt of the standard appeal application form, notify and request that the agency furnish the State Human Resources Director a copy of all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days following the request. Extensions may be granted in extenuating circumstances; and

3. Determine whether the appeal is timely and complies with the jurisdictional requirements of the Act.

E. If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision. A notice of appeal seeking appellate review of the decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 and 1-23-600 (D) of the S.C. Code of Laws.

F. If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency.

G. If the State Human Resources Director determines that the covered employee has pending related criminal charges against him, the appeal process may be held in abeyance pending the outcome of those charges at the request of the covered employee or the agency. If the appeal is held in abeyance, the covered employee or his representative must notify DSHR within 30 calendar days after the disposition of the charges has been determined in order to preserve the covered employee's right to further pursue his appeal. Failure to contact DSHR within those 30 calendar days will be deemed a waiver and abandonment of the appeal. Evidence of the dismissal, acquittal, or non-prosecution of the related criminal charges shall be inadmissible in the employee's appeal pursuant to applicable law.

H. At the request of the covered employee or the agency, the State Human Resources Director may place an appeal in abeyance in extenuating circumstances.

I. If the State Human Resources Director determines that the appeal is timely and complies with the requirements of the Act, he will forward the appeal either (1) to the mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated panel of the State Employee Grievance Committee [Committee] and Committee Attorney for a hearing, whichever is appropriate based on the type of adverse employment action.

J. When an appeal is forwarded to a designated Committee panel, the State Human Resources Director will notify the covered employee or their representative and the agency with a statement as to the issues which have been presented by the parties for presentation before the Committee for decision.

K. The official record on each appeal and all related correspondence and documents shall be maintained in a confidential file by DSHR.

L. The State Human Resources Director will send the notices and correspondence pertaining to an appeal directly to the parties or their representatives.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-718.06. MEDIATION PRIOR TO STATE EMPLOYEE GRIEVANCE COMMITTEE HEARINGS.**

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

B. Once an appeal has been made to the State Human Resources Director and has been determined to meet the jurisdictional requirements for an appeal to be forwarded to the Committee, the State Human Resources Director shall appoint a mediator to the appeal. The following adverse employment actions will be forwarded to the mediator: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy.

C. The mediator:

1. Shall review the documents which have been submitted by each party to the State Human Resources Director and schedule time(s) and location(s) to meet with both parties, jointly or independently, to attempt to resolve the matter;

2. Has sole authority to determine whether the meeting includes the parties with their representatives, jointly or independently;

3. Should determine when the mediation is not viable, that an impasse exists, or that the mediation should end. The mediation cannot be unilaterally ended without the permission of the mediator; and

4. Should notify each party in writing, as to the status of the mediation process no later than ten calendar days prior to the scheduled Committee hearing, when the parties have not resolved the matter and a written agreement has not been signed.

D. Mediation Conferences

1. Mediation conferences are confidential and limited to no more than three representatives, including legal counsel and the covered employee, for each party. An observer who has been assigned to conduct mediations for DSHR may attend for training purposes if both parties to the mediation concur.

2. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement.

3. Each covered employee may have representation at the mediation conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to

pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by DSHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

4. If the appeal is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for DSHR to assist in drafting the agreement.

E. Confidentiality

1. Any discussions by any of the parties concerned during the mediation process shall be kept confidential and shall not be used or referred to during subsequent proceedings.

2. The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum.

3. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

**19-718.07. APPEALS FORWARDED TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE.**

A. If a resolution through mediation as required by Section 19-718.06 of the State Human Resources Regulations cannot be accomplished, the State Human Resources Director shall forward the appeal to the designated panel of the Committee.

B. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings.

C. Witnesses

1. Notice - After an appeal has been determined to be appealable to the Committee and has been placed on the Committee's docket, the covered employee and the agency, or their designated representatives, shall exchange witness lists which must be received by the other party no later than five calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Witness lists which have not been exchanged as required by this provision and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.

2. Character Witnesses - No more than three character witnesses for each side will be permitted to testify before the Committee when evidence of character is relevant to the issues. A character witness is defined as a witness offered solely for the purpose of presenting testimony which bears on the positive or negative general character of the covered employee, i.e., the covered employee's reputation for truthfulness, peaceful or violent manner, or other considerations of character which have a bearing on the matter before the Committee.

3. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for witnesses at the request of either party. In the event that either party in an appeal has difficulty in obtaining a witness's agreement to testify, such party may request in writing the issuance of a subpoena which must be received by DSHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include the name of the witness. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred by a subpoenaed witness shall be paid by the requesting party.

4. Sequestration of Witnesses - Witnesses other than representatives shall be sequestered and are prohibited from being in the hearing room whether the appeal is heard in a public hearing or heard

in executive session. Exceptions to this prohibition include during preliminary comments, the Committee's opening statement, and that witness's testimony.

5. Depositions de bene esse - The testimony of a witness may be submitted into evidence in the form of a deposition de bene esse when the attendance of the witness whose testimony is required cannot be had (a) by reason of (i) extreme age, (ii) sickness or infirmity, or (iii) indispensable absence on public official duty, (b) as a result of verification of his intended absence from the State before the appeal can be heard by the designated Committee panel, or (c) when such witness may be without the limits of the State. If the parties cannot agree to the use of a deposition de bene esse, the party desiring to submit the deposition de bene esse may request permission from the Committee Chairman or his designee and the Committee Attorney to submit the deposition de bene esse. The party opposing the submission will be permitted an opportunity to respond to the request. The request and the response may be made either in writing before or verbally at the hearing. When the parties agree upon, or a party's request is granted for the use of, a deposition de bene esse, notice must be exchanged as to the time of the deposition de bene esse to allow all interested parties to attend and participate. A copy of this notice should be sent to DSHR. No other types of depositions, including discovery depositions, are permitted.

#### D. Documents

1. Submission to DSHR and Exchange by the Parties - Any records, reports, and documentation submitted by either party to be forwarded to the Committee prior to the hearing must be received by DSHR no later than 15 calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Those documents submitted by both parties will be provided by DSHR to committee members prior to the hearings and considered to be the record during the hearing and marked into evidence as Committee Exhibit I. Each covered employee granted a hearing before the Committee will receive a copy of the records, reports, and documentation submitted by the agency. In like manner, a copy of any records, reports, and documentation filed by a covered employee will be sent to the agency.

2. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for files, records, and documentation on the grievance at the request of either party. In the event that either party in a case has difficulty in obtaining the production of files, records, and documentation on the grievance, such party may request in writing the issuance of a subpoena which must be received by DSHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include a description sufficiently specific to identify the documents in question and the name of the custodian of the documents in question. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred in the production of the documents shall be paid by the requesting party. Subpoenaed documents shall be received by the requesting party no later than five calendar days prior to the hearing or by the date indicated by the requesting party. Motions, by either party, to quash a subpoena must be made to the Administrative Law Court.

#### 3. Committee Exhibit I

a. The State Human Resources Director shall arrange for the reproduction of records, reports, and documentation timely submitted by both parties and make this information available, prior to the date of the hearing, to the designated Committee panel and Committee Attorney for that hearing.

b. The documents transmitted by the State Human Resources Director to the designated Committee panel and Committee Attorney must be marked into evidence as "Committee Exhibit I" during the Committee Chairman's opening statement at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party.

#### E. Panel Hearings

1. Scheduling and Notice - The State Human Resources Director shall establish a date, time, and place for the hearing of each appeal and provide reasonable notice to the covered employee, agency, designated Committee panel, and Committee Attorney.

2. Continuances and Postponements - Prior to the commencement of the hearing, the State Human Resources Director has the authority to grant a postponement based upon extenuating circumstances.

3. Executive Session Hearings - All hearings before the State Employee Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act prior to the designated Committee panel voting to go into executive session. If the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney, and persons approved by the designated Committee Chairman may attend.

4. Committee Members

a. The Committee shall consist of at least 18 and not more than 24 members who must be appointed by the Director of the Department of Administration in accordance with the Act.

b. The State Human Resources Director may divide the Committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings.

c. A chairman shall be elected from the membership of the Committee each year after approval of membership of new members by the Director of the Department of Administration. A meeting for election of a chairman shall be held as soon as practicable after appointments are made.

d. A quorum of a panel shall consist of at least three Committee members. No hearings may be conducted without a quorum.

e. Whenever an appeal before the Committee is initiated by or involves an employee of an agency of which a Committee member also is an employee or involves another impermissible conflict of interest, the Committee member is disqualified from participating in the hearing.

5. Committee Attorney

a. The Department of Administration is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of Committee Attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the Department of Administration, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as Committee Attorney.

b. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions and all legal issues.

6. Attendance by the Parties

a. Panel hearings will be conducted on the date and at the time scheduled unless the Committee, acting collectively or through its designated Committee Chairman, upon commencement of a hearing, grants a postponement based upon extenuating circumstances.

b. Each covered employee may have representation at the panel hearing and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend the panel hearing, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the panel hearing. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the party on this issue and based on other information available relating to the panel hearing. Documents submitted by the party on the issue of reasonable justification must be received by DSHR no later than 14 calendar days from the date of the scheduled panel hearing. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

c. If the agency fails to appear at the panel hearing without reasonable justification, the designated Committee panel will base its decision on a review of Committee Exhibit I and a presentation of the case by the covered employee.

7. Administrative Assistance and Recordings of Hearings

a. The State Human Resources Director shall provide to the Committee from the resources of DSHR such administrative and clerical services as may be required.

b. All proceedings before the Committee shall be recorded by DSHR. The recording shall be preserved by DSHR.

8. Submission of Witness and Representative Lists to Committee - At the beginning of the hearing, each party shall provide to the secretary of the designated Committee panel a list of representatives and witnesses. Representatives who will testify must be listed as both a representative and a witness. Witness lists which have not been exchanged as required by Section 19-718.07 C. 1. of the State Human Resources Regulations and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.

9. Conduct of Hearings - The presiding Committee Chairman shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The Committee will give effect to rules of privilege recognized by law. The parties shall be bound by the decisions of the presiding officer or Committee Attorney insofar as such hearings are concerned.

10. Opening Statements and Order of Presentation of the Case

a. The designated Committee Chairman shall open the hearing by explaining the procedures to be followed in the hearing.

b. Each party shall be given an opportunity to make an opening statement.

c. The covered employee shall present his case first, followed by the agency.

11. Direct and Cross Examinations

a. The testimony of witnesses shall be under oath or affirmation.

b. Each party shall have the right to examine and cross-examine witnesses, as appropriate.

c. The designated Committee Chairman, the Committee Attorney, or any member of the designated Committee panel may direct questions to any party or witness at any time during the proceedings.

d. Each party may object to testimony, questions, or documents.

12. Evidentiary Matters - Evidentiary matters as governed by the South Carolina Administrative Procedures Act will apply in hearings before the Committee.

13. Interpretations from DSHR - The designated Committee Chairman of a designated Committee panel may request information or assistance in interpretations of rules and Regulations from the State Human Resources Director.

14. Closing Statement

a. Before closing the hearing, the designated Committee Chairman shall allow the parties to make a closing statement.

b. The covered employee will have the option of closing first or last.

F. Committee Deliberations and Written Committee Decisions

1. The designated Committee panel shall retire into executive session, without the parties present, to receive legal advice from the Committee Attorney and consider the evidence. The Committee Attorney may be present during the Committee's deliberations on its decision only upon the request of the designated Committee Chairman. No vote by the designated Committee panel may be taken in executive session except to come out of executive session.

2. Each member of the designated Committee panel shall vote on the merits of the appeal and the vote will be recorded.

3. Decisions of the Committee shall be determined by a simple majority of those members who heard the appeal.

4. Within 20 calendar days of the conclusion of the hearing, the designated Committee panel shall make its final written decision.

5. The final decision of the Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision.

6. As governed by the provisions of the Act, the Committee may sustain, reject, or modify a grievance hearing decision of an agency.

7. Any member agreeing with the majority decision but differing with the rationale may prepare a concurring decision. Any member voting in the minority may prepare a dissenting opinion.

8. The Committee Attorney or the attorney for DSHR or both may assist the Committee in the preparation of its findings of fact, statements of policy, and conclusions of law.

9. The decision of the Committee shall be transmitted to the State Human Resources Director for notification to the covered employee and the agency or their representatives.

10. As a result of this final written decision, either the covered employee or the agency may request reconsideration within 30 calendar days from receipt of the decision.

11. The designated Committee panel shall request assistance from the Committee Attorney or the attorney for DSHR or both in the preparation of a written response to a request for reconsideration.

12. If no request for reconsideration is made or when a response is made to a request for reconsideration, the Committee decision is final in terms of administrative review.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-718.08. APPEALS FORWARDED TO A MEDIATOR-ARBITRATOR.**

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

B. The State Human Resources Director shall forward to a mediator-arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and involuntary reassignments. In these cases, the arbitration decision is final in terms of administrative review. The provisions of the S.C. Administrative Procedures Act do not apply in the mediation-arbitration proceedings.

#### C. Selection and Assignment of the Mediator-Arbitrator

1. The mediator-arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to encourage and facilitate the resolution of the appeal and, if the appeal is not resolved, issue a decision which determines whether the covered employee substantiated that the agency's decision was not reasonable.

2. The State Human Resources Director shall maintain a pool of qualified mediator-arbitrators trained by DSHR in alternative dispute resolution, grievance, and related human resources issues.

3. The State Human Resources Director shall have the discretion to assign either two mediator-arbitrators, one to serve as mediator during the mediation phase and one to serve as arbitrator during the arbitration phase, or one mediator-arbitrator to serve as both mediator and arbitrator.

#### D. Mediation-Arbitration Conferences

1. The mediator-arbitrator shall review the documents which have been submitted by each party to the State Human Resources Director and shall schedule time(s) and location(s) to meet with both parties, jointly or independently.

2. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during mediation-arbitration conferences. An observer who has been assigned to conduct mediation-arbitrations for DSHR may attend for training purposes if both parties to the mediation-arbitration conference concur.

3. Each covered employee is entitled to representation at the conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must

be received by DSHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

4. If the agency fails to appear at a conference without reasonable justification, the mediator-arbitrator will base an arbitration decision on a review of the documents which have been submitted by each party to the State Human Resources Director and a presentation of the case by the covered employee.

5. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement.

#### E. Mediation Phase

1. The mediator-arbitrator has sole authority to determine whether conferences during the mediation phase include the parties with their representatives, jointly or independently.

2. Initially, the mediator-arbitrator will attempt to assist the parties as a mediator in reaching a voluntary mutual resolution of the appeal.

3. The mediation phase cannot be unilaterally ended nor the arbitration phase begun without the permission of the mediator-arbitrator.

4. If the dispute is resolved, the mediator-arbitrator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for DSHR to assist in drafting the agreement.

#### F. Arbitration Phase

1. If the mediator-arbitrator determines that the parties are unable to reach a resolution of the appeal by mediation during, but no later than, the 20 calendar days immediately following the initial conference with either or both parties, then the mediator-arbitrator shall notify the parties that the arbitration phase will proceed, as appropriate.

##### 2. Procedures for Arbitration Phase

a. During the arbitration phase, the parties will be allowed to submit to the mediator-arbitrator a concise written summary of the relevant issues involved in the appeal, notarized statements, and other additional documents or information. The parties must have provided the other party and the mediator-arbitrator with the written summary of relevant issues, any notarized statements from individuals who have knowledge about the issues on appeal, and other related documents or information concerning the appeal prior to the arbitration conference. The time for the exchange by the parties and submission to the mediator-arbitrator of the written summary of relevant issues, notarized statements, and other related documents or information will be determined by the mediator-arbitrator.

b. During the arbitration phase, the mediator-arbitrator will allow each party a maximum of two hours to present his appeal, with the covered employee presenting his case first. Either the party or one of his representatives shall be designated as the spokesperson during the conference. No testimony will be allowed and others in attendance will not be allowed to speak or ask questions during the presentation of information. The parties may use the designated time to present any oral arguments concerning the issues on appeal. The covered employee may reserve a portion of the two hours to reply to the agency's contentions. This reply is limited only to information presented orally by the agency and shall not exceed one-half of the total time for the presentation of information. In extenuating circumstances, the mediator-arbitrator may increase or decrease the time each party has to present his appeal at the conference during the arbitration phase.

c. The other party and his representatives may be present when a party presents his appeal during the arbitration phase.

d. Conformity to legal rules of evidence shall not be necessary during the arbitration phase.

e. At any time before the mediator-arbitrator makes a final arbitration decision, the mediation phase may be reopened at his initiative, or at his discretion upon request of a party.

f. The mediator-arbitrator shall transmit to both parties a final written decision based on all documents properly submitted by both parties and the oral arguments presented during the



arbitration phase within 45 calendar days after the mediator-arbitrator initially meets with either or both parties. This 45-day period may be extended by the State Human Resources Director under extenuating circumstances. When the expiration of this 45-day period occurs during the seven day waiting period required under the Older Workers Benefit Protection Act before a written agreement becomes effective, the State Human Resources Director will extend the 45-day period one day for each day remaining in the seven day waiting period.

g. As a result of this final written decision, either the covered employee or the agency may request reconsideration by the mediator-arbitrator within 30 calendar days from receipt of the decision.

h. The mediator-arbitrator may request assistance from the attorney for DSHR or DSHR staff in the preparation of his final written decision and his written response to a request for reconsideration.

#### G. Confidentiality

1. The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator-arbitrator.

2. The mediator-arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation-arbitration in any adversary proceeding or judicial forum.

3. All records, reports, documents, discussions, and other information received by the mediator-arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during appellate review to the Administrative Law Court.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-718.09. APPELLATE REVIEW OF ANY FINAL DECISION.**

Either party may seek appellate review to the Administrative Law Court from a final decision by the State Human Resources Director denying an appeal or by the State Employee Grievance Committee or mediator-arbitrator.

A. A notice of appeal seeking appellate review to the Administrative Law Court must be initiated within 30 calendar days from receipt of the decision.

B. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 (5) (B) and 1-23-600 (D) of the S.C. Code of Laws.

C. Only after an agency submits a written request to DSHR seeking approval of the Department of Administration may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the Director of the Department of Administration.

D. The covered employee or the agency who first files the notice of appeal seeking appellate review of a State Employee Grievance Committee decision is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of the record to the Administrative Law Court.

E. The record for appellate review of a decision made by a mediator-arbitrator shall be limited to the documents and information which have been submitted by each party and the final written decision of the mediator-arbitrator.

F. The record for appellate review of a decision made by the State Human Resources Director shall be limited to the documents and information which have been submitted by each party and the final written decision of the State Human Resources Director.

G. The covered employee or the agency who first files the notice of appeal seeking appellate review of a final decision by (1) the State Human Resources Director denying an appeal; (2) the State Employee Grievance Committee; or (3) a mediator-arbitrator, is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of

the record to the Administrative Law Court. In addition, the appealing party is responsible for all costs associated with providing the record on appeal to the Administrative Law Court.

H. Neither the Department of Administration nor DSHR nor the State Human Resources Director nor the Committee nor the mediator-arbitrator may be named in the notice of appeal to the Administrative Law Court. However, any of these entities are entitled to make a motion in the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-718.10. COMPUTATION OF BACK PAY.**

A. Reinstatement of pay resulting from a reversed disciplinary action shall be less any other related income received, such as unemployment compensation, workers' compensation, State retirement benefits (only when the employee retires after the disciplinary action occurs and when the income is the result of a termination), and wages earned, for the period of time in which the pay was deducted and shall be accomplished in the following manner:

1. The covered employee shall submit to the agency a notarized statement of any wages earned during the interim period of disciplinary action;

2. The agency shall submit a written request for the covered employee's reinstatement of pay and a statement of back pay due, less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, to the State Human Resources Director;

3. Any unemployment compensation earned by the employee will be verified by DSHR through the Department of Employment and Workforce. The amount of unemployment compensation provided by the Department of Employment and Workforce will be used in determining the final back pay amount.

4. The computation of back pay must be in accordance with guidelines provided by the Office of the Comptroller General for agencies whose payroll is issued by the Comptroller General. For all other agencies, computation of back pay must be in accordance with applicable agency policies and procedures; and

5. The State Human Resources Director must approve the amount of reinstatement pay due the employee. That approval is not subject to administrative appeal and will constitute the final administrative decision.

B. The above procedure shall be followed in all reversed disciplinary actions.

C. The intent of this Regulation is only to make the employee whole as if the disciplinary action had not occurred.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-718.11. APPROVAL OF PERSONNEL SETTLEMENTS.**

It is the policy of the State Fiscal Accountability Authority that personnel settlement proposals be presented to the State Fiscal Accountability Authority for approval as outlined in the following:

A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;

B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, Department of Employment and Workforce, Equal Employment Opportunity Commission, or South Carolina Human Affairs Commission; and

C. In all other situations where specific approval of the State Fiscal Accountability Authority would be necessary to disburse funds mentioned under the settlement proposal. Exception: Personnel Settlements containing lump sum amounts where payment would be supplied by the Insurance Reserve Fund or an agency's Foundation Fund.

1. All personnel settlement proposals shall contain such information as the State Fiscal Accountability Authority or its designee specifies.

2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-719. SEPARATION FROM STATE SERVICE.**

### **SCOPE AND PURPOSE**

This Regulation governs how the State government employment relationship may end.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-719.01. CONTINUOUS STATE SERVICE AND BREAK IN SERVICE.**

#### **A. Continuous State Service**

Continuous State service is service with one or more agencies without a break in service.

#### **B. Break in Service**

An employee experiences a break in service when the employee:

##### **1. Separates from State service.**

Exception - When an employee moves from a position in which the employee earns both annual and sick leave to a position in which the employee only earns sick leave. All earned sick leave shall be transferred in accordance with Section 19-710.05 A.

2. Moves from one State agency to another and is not employed with the receiving agency within 15 calendar days following the last day worked (or approved day of leave) at the transferring agency.

Exception - Under extenuating circumstances an agency head may approve an extension from 15 calendar days up to but not in excess of six months for an employee in a full-time equivalent (FTE) position to be employed in another FTE position within State government without having a break in service. The approval must be made prior to the employee receiving a lump sum payment for unused annual leave and within 15 days of the last day the employee is in pay status.

##### **3. Remains on leave for a period of more than 12 months.**

#### **Exceptions**

a. The employee is on a military tour of duty with reemployment rights protected under federal or State law.

b. The employee is participating in the Government Employees Interchange Program as provided in Section 19-714.

c. The employee is an academic personnel at an institution of higher learning on sabbatical leave.

4. Separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation.

5. Involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts.

6. Moves from an FTE position to a temporary, temporary grant, or time-limited position. Exception - When an employee in an FTE position moves to a temporary, temporary grant, or time-limited position within 15 calendar days following the last day worked (or approved day of leave) during the employee's TERI program period, he does not experience a break in service.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-719.02. RESIGNATION.**

A. An employee may resign orally or in writing. Such notification of resignation should be accepted by the agency in the same manner as provided, whether written or oral, and an oral acceptance of a resignation should be generally confirmed in writing. Once an employee's resignation is accepted, it may not be withdrawn, cancelled, or amended without consent of the agency head or his designee.

B. Resignations should be given to provide a minimum of two weeks notice.

C. Any employee who voluntarily submits a written resignation may not grieve or appeal under the State Employee Grievance Procedure Act.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-719.03. TERMINATION.**

For purposes of the State Employee Grievance Procedure Act, termination is the action taken by an agency against an employee to separate the employee involuntarily from employment.

**HISTORY: Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.**

### **19-719.04. REDUCTION IN FORCE.**

A. Statements of Policy

1. The Division of State Human Resources shall develop a reduction in force model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's reduction in force policy.

2. Each agency shall develop a reduction in force policy. This requirement shall not apply to academic personnel. However, each institution of higher learning or medical institution of education and research shall develop a policy outlining the criteria for a reduction in force for these employees.

3. Technical colleges are required to have a reduction in force policy.

4. Employees on authorized leave are eligible to compete in a reduction in force as if they are not on leave.

5. When a covered employee is assigned lower level responsibilities or demoted as a result of a reduction in force implemented due to loss of funding, the employee's salary may be reduced on the effective date of the reduction in force. The agency head or his designee, at his discretion, may reduce the employee's salary to a salary either between 0%-15% below the employee's current salary or between the employee's current salary and the midpoint of the lower pay band. In exercising this discretion, the agency head or his designee may use the option which results in the greatest cost savings.

(Note: Regulation 19-719.04 A. 5. only applies to decreases in salary as a result of a reduction in force implemented due to loss of funding and is an exception to salary decreases when a covered employee is assigned lower level responsibilities or demoted as listed in Sections 19-705 and 19-706.)

B. Reduction in Force Plan

1. Each agency shall submit a reduction in force plan to DSHR for review and approval for procedural correctness prior to its implementation.

2. A reduction in force plan must include:

a. A reason for the layoff as defined by the agency. These circumstances shall be either agency reorganization, work shortage, loss of funding, or outsourcing/privatization. If the reason for the reduction in force is due to a loss of funding, DSHR will forward a copy of the plan to the Executive Budget Office for concurrence on the budgetary issue prior to final approval.

b. The competitive area(s) in which the reduction in force will apply. Competitive area(s) shall be determined by the agency according to critical needs. Any covered employee affected by a reduction in force shall have bumping rights within a competitive area(s).

c. The competitive group(s) within the competitive area(s) as defined by the agency including any employees in specified competitive area(s).

- d. The proposed list of employees to be affected by the reduction in force which includes:
  - (1) The age, race, and sex of all employees in the competitive group(s); and
  - (2) A preliminary list of employees in each group in retention point order.
- e. The efforts that will be made to assist laid off employees to find other employment, including notice to DSHR.
- f. A current organizational chart showing the competitive area(s) and competitive group(s).
- g. Justification of the use of any retention of necessary qualifications as provided in the agency's reduction in force policy.

### 3. Implementation

After a reduction in force plan is reviewed and approved by DSHR for procedural correctness and before it becomes effective, an agency representative shall inform affected employees of the following:

- a. The reason for the reduction in force;
- b. The competitive area(s) and competitive group(s);
- c. The effects of the reduction in force upon State benefits;
- d. The assistance offered by DSHR;
- e. The employee's recall rights; and
- f. The method of notification should a job become available.

### 4. Reduction in Force Rights

- a. Any covered employee affected by a reduction in force shall retain covered status and recall rights for a period of one year from the date of separation.
- b. Employees who are affected by the reduction in force shall be recalled in inverse order based on retention points should a position become available within the competitive area.
- c. A covered employee who is separated due to a reduction in force shall retain continuous service if the employee is reinstated within one year from the date of separation.
- d. An employee who is separated by an agency by a reduction in force and is subsequently reinstated within one year shall have his sick leave restored and shall be given the option of buying back all, some, or none of his annual leave at the rate at which it was paid out.

### 5. Grievance Rights

A covered employee who is affected by a reduction in force may grieve or appeal the reduction in force under the State Employee Grievance Procedure Act if the appeal is based on inconsistent or improper application of a reduction in force policy or plan.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-719.05. EXIT INTERVIEWS.**

A. Each agency should establish a procedure for obtaining separation information from each employee who separates from State service. This procedure should include an exit interview to reflect the specific reasons for the employee's separation. A reasonable effort should be made to interview the employee to obtain the information.

B. Each agency should maintain and summarize a general file on all exit interviews for review by management.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-719.06. ANNUAL AND SICK LEAVE UPON SEPARATION.**

A. Section 19-709.05 explains the applicable annual leave provisions when an employee separates from State service.

B. Section 19-710.06 explains the applicable sick leave provisions when an employee separates from State service.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

## **19-720. RECORDKEEPING.**

### **SCOPE AND PURPOSE**

This Regulation governs the recordkeeping requirements for human resources programs.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-720.01. STATEMENT OF POLICY.**

Each agency shall establish and maintain all records required by State law or the Division of State Human Resources (DSHR) concerning human resources programs.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-720.02. EMPLOYEE RECORDS.**

A. Each agency shall establish and maintain an official human resources file for each employee which shall include, but not necessarily be limited to, the following:

1. Employment application;
2. All human resources actions reflecting the employee's work history with the agency;
3. Documentation directly related to the employee's work record; and
4. All performance evaluations.

*(Refer to Section 19-707.02 J. 3.)*

B. An employee's official human resources file shall be available for the employee's review upon request.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **19-720.03. RECORDS RELEASE.**

A. In response to requests for information from human resources records, agencies may provide, pursuant to the Freedom of Information Act, an employee's name, date of employment, title, sex, and race. The determination to disclose other types of information should be made on a case by case basis. Requests for salary information should be answered in accordance with the Freedom of Information Act. *(Refer to Section 19-703.05.)*

B. In responding to requests for information concerning current or former employees by prospective employers under § 41-1-65 of the South Carolina Code of Laws, agencies may provide information as follows:

1. Agencies responding to oral requests for information may disclose an employee's or former employee's dates of employment, pay level, and wage history.
2. Agencies responding to written requests may disclose the following information to which an employee or former employee may have access:
  - a. Written employee evaluations;
  - b. Official human resources notices that formally record the reasons for separation;
  - c. Whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
  - d. Information about job performance.
3. Agencies shall not knowingly or recklessly release or disclose false information.

4. Responses to requests under § 41-1-65 of the South Carolina Code of Laws should be considered in conjunction with the Freedom of Information Act.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

#### **19-720.04. CENTRAL HUMAN RESOURCES DATA SYSTEM.**

Refer to Section 19-701.05.

**HISTORY:** Added by State Register Volume 26, Issue No. 1, eff January 25, 2002. Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010; State Register Volume 40, Issue No. 10, eff October 28, 2016.

### **SUBARTICLE 2 SINGLE COOPERATIVE INTERAGENCY MERIT SYSTEM (MERIT SYSTEM RULE)**

Statutory Authority: 1976 Code §§ 8-9-10 through 8-19-60

#### **Editor's Note**

Regulation 19-750 formerly appeared as 97-50, and is included in Chapter 19 pursuant to the provisions of the State Register, Volume 6, Issue 9, effective June 11, 1982 which provides as follows:

"The Merit System Rule is exempt from review by the General Assembly under the provision of Section 1-23-120, S.C. Code of Laws (Administrative Procedures Act). The Rule, as contained in Sections 8-19-10 through 8-19-60, S.C. Code of Laws has recently been revised and the revised Rule is hereby being incorporated into the regulation of the State Personnel Division as Subarticle 2, Chapter 19, Regulation 750."

#### **19-750. Single Cooperative Interagency Merit System.**

##### **ARTICLE I**

##### **MERIT PRINCIPLES**

Applicants and employees covered by this regulation, hereinafter referred to as the Merit System Rule, shall be recruited, selected, and advanced on the basis of their relative knowledges, skills, and abilities. Such applicants and employees shall be protected from discrimination on the basis of political affiliation, race, color, national origin, sex, religious creed, age, or disability. Their treatment shall be with proper regard for their privacy and constitutional rights as citizens.

Employees covered by the Merit System Rule shall be protected against coercion for partisan political purposes. Such employees shall not use their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

##### **ARTICLE II**

##### **MERIT SYSTEM COUNCIL**

As provided for in Title 8, Chapter 19 of the Code of Laws of South Carolina 1976, the Single Cooperative Interagency Merit System of Personnel Administration for Grant-In-Aid Agencies of the State shall be administered by a Merit System Council. The Merit System Rule is the basic requirement covering all personnel in the grant-aided agencies who participate in the Interagency Merit System, except those specifically exempted. When it appears to be desirable in the interest of efficient administration, the Merit System Council may initiate, or a participating agency may request, the amendment of the Merit System Rule. The authority for making any amendments to the Merit System Rule shall be the Merit System Council, based upon a majority vote of the members constituting a quorum.

It shall also be the duty of the Merit System Council:

1. To establish the general policies for the administration of the Merit System Rule.
2. To establish a single office and ensure, in accordance with the Merit System Rule, such staff as may be required for an efficient operation.

3. To establish procedures whereby the Merit System Council may enter into agreements with additional state agencies, municipalities, or political subdivisions to furnish facilities and services in the administration of their merit system programs for a reasonable cost.
4. To hear appeals or establish impartial bodies to hear such appeals on its behalf.
5. To make recommendations, in cooperation with the agencies served, to the Budget and Control Board, legislative committees, and other interested bodies.
6. To make written recommendations to the Governor and the agencies served with respect to any amendments or changes to Title 8, Chapter 19 of the Code of Laws of South Carolina 1976.
7. To promote public understanding of the purposes, policies, and practices of the Interagency Merit System.
8. To review and present, on behalf of the agencies served, written recommendations to the Office of Human Resources with respect to any rules of classification and compensation, records and reports, and any and all rules and regulations affecting proper and efficient personnel administration.
9. To ensure that the total cost of the Interagency Merit System be prorated among the participating agencies as determined by the Merit System Council.
10. To ensure that the fiscal accounting of the funds of the Interagency Merit System be placed in the fiscal section of the Office of Human Resources.
11. To operate under the state classification and compensation plan.
12. To ensure that existing and new equipment purchased in the future shall be carried in the name of the Interagency Merit System and belong jointly to participating agencies in the same relationship as each agency contributed to the total initial cost.

### **ARTICLE III**

#### **ADMINISTRATION OF THE MERIT SYSTEM RULE**

The State Human Resources Director shall develop policies and procedures for the administration of the Merit System Rule and shall also administer any other policies and procedures set forth by the Merit System Council. The Director shall assign employees of the Office of Human Resources such duties as may be necessary for the proper execution of these policies and procedures. All employees of the Office of Human Resources who are assigned such duties shall be appointed in accordance with the Merit System Rule and covered by its provisions.

The State Human Resources Director may delegate to state agencies any merit system functions or activities that he deems appropriate. All delegation of merit system functions or activities to an agency shall be covered by written agreements. These agreements shall constitute a contractual relationship between the Office of Human Resources and the agency and may be altered or terminated only by mutual agreement. Agencies that assume responsibility for delegated functions or activities shall comply with the Merit System Rule, all other relevant state regulations, and any standards, guidelines, practices, and requirements that are specified by the Office of Human Resources.

### **ARTICLE IV**

#### **APPLICABILITY OF THE MERIT SYSTEM RULE**

The Merit System Rule is applicable to all state employees engaged in the administration of grant-in-aid programs, regardless of the source of funds of their salaries, when federal laws and regulations require that these programs establish and maintain personnel systems on a merit basis. Any exemptions must be approved by the State Human Resources Director. If, because of extraordinary circumstances, an agency head wishes to exempt an individual position from the provisions of the Merit System Rule, he shall submit written justification to the Office of Human Resources for approval by the State Human Resources Director.

Notwithstanding the above, employees who serve at the pleasure of an agency head, unskilled or semiskilled laborers, temporary positions, bona fide part-time positions, and time-limited positions established for the purpose of conducting a special project, study, or investigation are, at the discretion of the agency, exempt from the provisions of the Merit System Rule.



## **ARTICLE V**

### **SELECTION AND APPOINTMENT**

#### **A.**

Selection for appointment to positions covered by the Merit System Rule (hereafter referred to as "merit positions") shall be through open competition. Appointment shall be made on the basis of merit from lists of applicants who have successfully completed the assessment process (hereafter referred to as "eligible lists") established by the Office of Human Resources for this purpose. The Office of Human Resources, in close collaboration with the agencies served, shall plan the content of recruitment and selection processes. Selection procedures will be job related and will maximize validity, reliability, and objectivity.

#### **B.**

The Office of Human Resources shall accept applications as necessary for the establishment of eligible lists. The Office of Human Resources, in consultation with the agencies served, shall determine if the closure of specific eligible lists is appropriate. Names of employees who have merit system status may be placed on eligible lists during periods of closure.

Prior to appointment, an applicant for a merit position must meet the minimum requirements established by the Office of Human Resources for that classification, as well as any additional job-related requirements for that position. However, if an agency head considers that an applicant's qualifications are equivalent to the minimum requirements for the classification, the agency head may request an equivalency from the State Human Resources Director. The State Human Resources Director shall approve or deny such requests.

The Office of Human Resources shall discontinue the processing of the application of any person who does not meet the job-related requirements for a particular position, unless the applicant has received an equivalency from the State Human Resources Director. Additionally, the State Human Resources Director may discontinue the processing of the application of any person who has failed to properly complete or has falsified the application or any supporting materials.

The State Human Resources Director may disqualify an applicant who has directly or indirectly obtained information about a selection procedure to which, as an applicant, he was not entitled. The State Human Resources Director may also disqualify an applicant who has taken part in the development, administration, or scoring of a selection procedure in which he was a competitor.

#### **C.**

The Office of Human Resources, in consultation with the agencies served, shall determine the most appropriate selection procedure(s) for each position. Selection procedures may include, but are not limited to, any combination of the following: additional education, experience, knowledges, skills, or abilities that are desirable for the performance of essential job functions; ratings of training and experience; written tests; structured oral examinations; and performance tests. All applicants for a particular position shall be accorded uniform and equal treatment in all phases of the assessment process.

The Office of Human Resources shall establish policies for awarding veterans' preference to eligible individuals.

The Office of Human Resources may modify the selection procedures for merit positions to reasonably accommodate qualified individuals with disabilities. In response to state or federal legislation, the Office of Human Resources may also limit competition for merit positions to facilitate the employment of qualified economically disadvantaged individuals.

#### **D.**

The Office of Human Resources is responsible for the maintenance of all eligible lists. An applicant's name shall normally be placed on an eligible list for a period of one year. The State Human Resources Director, in consultation with the agencies served, may extend or reduce the period of eligibility for specific classifications. An employee who has merit system status shall remain eligible for an indefinite

period of time, unless changes in the job-related requirements for a particular position result in the determination that the employee does not meet the new requirements.

Upon the expiration of the period of eligibility, the applicant's name shall be removed from the eligible list. The Office of Human Resources shall also remove an applicant's name from an eligible list for the following reasons:

1. Any of the reasons contained in Part B of this article.
2. Reasonable indication that the applicant cannot be located by the postal authorities.
3. Notification from an agency that the applicant has failed to reply to a written interview notice within ten calendar days of the date of the notice.
4. Receipt of a notice from the applicant indicating that he no longer wishes to be considered for appointment to that classification.
5. Notification from an agency that an applicant has been considered three separate times for employment in that classification within the previous twelve months.
6. Appointment of the applicant to a merit position with a pay band that is greater than the pay band assigned to the classification for which the eligible list is maintained.
7. Abolition of the entire eligible list.
8. Receipt of documentation from an agency head demonstrating that the applicant is unsuitable for employment in a particular classification or in merit positions in general.

#### **E.**

The Office of Human Resources shall develop methods for grouping eligibles based upon their final scores on the selection procedure(s) used for each position. Appointments to merit positions shall be made from the group of available eligibles identified as most highly qualified for the position in question. If the most highly qualified group does not include a minimum of ten available eligibles, appointments may be made from the ten available individuals with the highest scores on the selection procedure(s).

Merit positions in an agency's central office must be filled through work area preference certification for classifications above Pay Band 4. For appointment to all other merit positions, the appointing authority may request that appointments be restricted to residents of the county where the vacancy exists and, at the discretion of the appointing authority, residents of immediately adjacent counties.

When considering eligibles for appointment, the agency is not required to consider anyone who cannot be located by the postal authorities, who fails to reply to a written notice of the vacancy within ten calendar days, who indicates verbally or in writing that he is not interested in being considered for the position, who has been considered three separate times for appointment to the classification within the previous twelve months, who is considered by the agency head to be unsuitable for employment in that classification or in merit positions, or whose appointment would violate the State Ethics Act.

### **ARTICLE VI**

#### **MERIT SYSTEM STATUS AND PERSONNEL TRANSACTIONS**

#### **A.**

Any person who is appointed to a merit position in accordance with Article IV of the Merit System Rule shall be required to complete a working test period of twelve months. Upon the satisfactory completion of twelve months of continuous service in that merit position and any other merit position(s) to which the employee was appointed in accordance with Part B of this article, the employee shall be awarded merit system status. In counting the time an employee must serve to complete the working test period, the agency head may allow credit for any prior service of the employee in the same classification, provided the service was satisfactory, continuous, in accordance with the State Human Resource Regulations, and immediately preceded the competitive appointment without a break in service.

Once an employee has been awarded merit system status, he shall retain it as long as he has continuous state service in one or more merit positions.

**B.**

Any employee who has merit system status may be placed in another merit position or may have his position reclassified. Such movement or reclassification may be accomplished without regard to the competitive requirements of Article V of the Merit System Rule. However, a person may be employed in a merit position only if he meets the job-related requirements for that position or has received an equivalency from the State Human Resources Director. The Office of Human Resources shall be responsible for determining if an employee meets the job-related requirements for a position.

An employee who does not have merit system status may only be placed in another merit position by meeting the competitive requirements of Article V of the Merit System Rule. The reclassification of a merit position occupied by an employee who does not have merit system status may not be effected unless the employee satisfies the competitive requirements of Article V with regard to the new classification.

**ARTICLE VII**

**REEMPLOYMENT, REINSTATEMENT, AND REDUCTIONS IN FORCE**

**A.**

Within two years of the date of separation from state employment, any former employee who separated in good standing while holding merit system status may exercise reemployment and reinstatement rights as follows:

1. At the discretion of a covered agency, the former employee may be reemployed in a merit position without regard to the competitive requirements of Article V of the Merit System Rule. Reemployment is limited to the classification the employee occupied at the time of separation, to other classifications the employee occupied while holding merit system status, or to positions for which the employee was in the eligible lists at the time of separation. The employee must meet the job-related requirements for the merit position or receive an equivalency from the State Human Resources Director. Reemployment shall be with merit system status unless the head of the appointing agency elects to require a working test period.

2. The former employee may request reinstatement to merit system eligible lists. Reinstatement is limited to the eligible list from which the employee's most recent appointment was made, to eligible lists the employee occupied at the time of separation, and to eligible lists for classifications the employee occupied while holding merit system status. The employee must meet the job-related requirements of the positions for which these eligible lists are utilized or receive an equivalency from the State Human Resources Director. The Office of Human Resources shall establish policies for the noncompetitive reinstatement of eligible former employees.

If not exercised within two years of the date of separation, reemployment and reinstatement rights are forfeited.

**B.**

If an employee holding merit system status is involved in a reduction in force, he is eligible for noncompetitive placement in eligible lists. Such placement is restricted to the lists for any position of an equal or lower pay band than the position occupied at the time of the reduction in force. The employee must, however, meet the job-related requirements for these positions or receive an equivalency from the State Human Resources Director. The Office of Human Resources shall establish policies for the noncompetitive reemployment of eligible former employees.

**ARTICLE VIII**

**MERIT SYSTEM APPEALS**

The Merit System Council shall hear appeals from applicants and employees. Only the following actions are appealable to the Merit System Council:

1. Nonprocessing of an application by the State Human Resources Director for any of the reasons contained in Article V, Part B.

2. Removal of an applicant's name from an eligible list for any of the reasons contained in Article V, Part D.

3. An allegation that the State Human Resources Director, his designee(s), or the appointing agency failed to comply with the provisions of the Merit System Rule.

Any applicant or employee who wishes to make an appeal must do so, in writing, within ten working days of the action that is being appealed. All appeals must be directed to the State Human Resources Director, who shall determine if the appeal is timely and if the action is appealable. If these conditions are met, the State Human Resources Director shall arrange for a formal hearing before the Merit System Council. The State Human Resources Director shall also furnish the personnel office of any covered agency that is involved copies of the appeal and any related information reasonably in advance of the hearing. All parties to the appeal shall have the right to present witnesses and documentary evidence before the Merit System Council. The conduct of the hearing shall be in accordance with procedures established by the Merit System Council. After consideration of the appeal, the Merit System Council shall make its decision within three working days. The State Human Resources Director shall notify the appellant, in writing, of the Council's decision within thirty working days.

## **ARTICLE IX**

### **EXTENSION OF MERIT SYSTEM**

The Merit System may be extended to include agencies or an agency's specific program components that have not previously been covered by the Merit System Rule. Before an individual who is employed in such an agency or program can acquire the protection, rights, and privileges prescribed by the Merit System Rule, the employee must obtain merit system status.

Merit system status will be awarded to an employee after he has completed twelve consecutive months of satisfactory service in one or more classified position(s), provided such service is continuous, in accordance with the State Human Resources Regulations, and without a break in service. In counting the twelve months of satisfactory service, the agency head may allow credit for service prior to the effective date of the extension of coverage.

An individual may not remain employed in a classification for which he does not meet the minimum requirements. By the effective date of the extension of coverage, the employee must be placed in a classification for which he meets the minimum requirements, or separated from employment.

## **ARTICLE X**

### **PILOT PROJECTS**

The State Human Resources Director may conduct formal pilot projects designed to improve the recruitment, assessment, referral, or appointment processes. Any portion of the Merit System Rule may be waived for the purpose of these projects for a period of time not exceeding two years. Upon completion, the State Human Resources Director will formally evaluate the project. If desirable, the waiver may, at the discretion of the State Human Resources Director, be extended to cover any additional period of time necessary for the revision of the Merit System Rule.

**HISTORY:** Amended by State Register Volume 10, Issue No. 5, eff May 23, 1986; State Register Volume 11, Issue No. 1, eff January 23, 1987; State Register Volume 11, Issue No. 9, eff September 25, 1987; State Register Volume 13, Issue No. 1, eff January 27, 1989; State Register Volume 14, Issue No. 2, eff February 23, 1990; State Register Volume 16, Issue No. 11, eff November 27, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 21, Issue No. 6, Part 1, eff June 27, 1997.

## **SUBARTICLE 3**

### **STATE EMPLOYEE GRIEVANCE COMMITTEE RULES**

(Statutory Authority: 1976 Code §§ 8-17-10 through 8-17-60)

## **19-775. STATE EMPLOYEE GRIEVANCE COMMITTEE REGULATIONS.**

### **19-775.01. Persons Entitled to Bring Proceedings.**

All permanent State employees meeting the conditions specified in the State Employee Grievance Act of 1982 may bring proceedings before the State Employee Grievance Committee.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987.

### **19-775.02. Nature of Grievances.**

Based on Section 8-17-330, 1976 Code of Laws of South Carolina, as amended, grievances shall include dismissals, suspensions, involuntary reassignments, and demotions. Reclassifications, reassignments, and transfers to the same pay grade are not considered grievances. Promotions are not considered grievances. However, where an allegation is made that the grievant was excluded from consideration for promotion to a position greater than one organizational level above his present level for which he was qualified when the promotional opportunity occurred, and the grievant applied or would have applied if he had known of the promotion opportunity, and the Director of the Office of Human Resources determines that there is any material issue of fact or conclusion to be drawn from the facts of the allegation, then the promotion shall be deemed grievable. Compensation shall not be deemed a proper subject for consideration except as it applies to alleged inequities within a particular agency or salary decreases based on the results of EPMS evaluations. A reduction in force shall be appealable by an affected employee only if based on inconsistent or improper application of a reduction in force policy, procedure or plan. Reclassification shall not ordinarily be deemed grievable as a demotion. However, if an allegation is made that a reclassification is punitive and the Director of the Office of Human Resources determines there is any material issue of fact or conclusion to be drawn from the facts of the allegation, then the reclassification shall be deemed grievable.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.03. Appeals.**

Grievances shall be appealable through the Director of the Office of Human Resources to the State Employee Grievance Committee. The Director of the Office of Human Resources shall assemble all records, reports and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether the action is grievable to the Committee. Upon receipt of appeals of questionable jurisdiction, the Director of the Office of Human Resources shall determine whether an action is grievable.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.04. Preliminary Attempt to Resolve Grievance.**

Once an appeal has been made to the Director of the Office of Human Resources and has been determined to be appealable to the Committee, the Director of the Office of Human Resources or the Director's designee shall review the record of the internal grievance process and shall schedule appointments to discuss the grievance separately with the employee or the employee's representative, or both, and representatives of the agency to attempt to resolve the matter. If an agreement between the two parties is not reached, the Director of the Office of Human Resources or the Director's designee shall present tentative findings and recommendations to both parties for resolution of the grievance appeal. Each party shall submit a written response within ten calendar days setting forth acceptance or rejection of the recommendations. Any discussions by any of the parties concerned during the mediation process shall be kept confidential and shall not be used or referred to during subsequent proceedings on the appeal.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.05. Notice of Hearings.**

The Director of the Office of Human Resources shall notify Committee members, Committee Attorney and all other parties concerned of the date, time and place of grievance hearings and request their presence.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.06. Records and Papers; Administrative and Clerical Assistance.**

The Director of the Office of Human Resources shall arrange for the reproduction of pertinent files, records and papers and distribute copies to the members of the Committee that will hear the grievance and to the Committee Attorney prior to the date of the hearing. The Director of the Office of Human Resources shall be responsible for recording the grievance hearings and shall provide to the Committee from the resources of the Office of Human Resources such administrative and clerical services as may be required.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.07. Witnesses and Representatives.**

The following shall apply regarding witnesses and representatives.

A. After a grievance appeal has been determined to be grievable to the Committee and has been placed on the Committee's docket, representatives for the appellant and the agency shall exchange witness lists and forward a copy of the lists to the Office of Human Resources no later than five (5) days prior to the hearing. Witness lists which have not been exchanged as required by this provision, will be excluded unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.

B. The Office of Human Resources must be notified at least five (5) days prior to the hearing of any representatives that will be present. Representatives may only be added after this time with the Committee's consent. Representatives who will be testifying must be listed as representatives and witnesses in order to testify. No more than three (3) representatives may be designated by either party.

C. No more than three (3) character witnesses for each side will be permitted to testify before the Committee. A character witness is defined as a witness offered solely for the purpose of presenting testimony which bears on the positive or negative general character of the grievant, i.e. the grievant's reputation for truthfulness, peaceful or violent manner, or other considerations of character which have a bearing on the matter before the committee.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.08. Time Limitations for Requested Materials.**

Any files, records and papers requested by the Director of the Office of Human Resources from the agency should be forwarded no more than ten (10) days following the request. Any other files, records and papers submitted by either party to be forwarded to the Committee prior to the hearing must be received in the Office of Human Resources at least fifteen (15) days prior to the hearing. Those documents submitted by both parties will be provided to Committee Members prior to the hearings and considered to be the record from the agency's internal grievance procedure on appeal during the hearing.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

### **19-775.09. Copies of Records.**

Each employee granted a hearing before the Grievance Committee will receive a copy of the files, records and papers submitted by the agency. In like manner, a copy of any files, records and papers filed by an employee will be sent to the agency.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987.

#### **19-775.10. Subpoenas; Expenses of Witnesses.**

The Committee Chairman or his designee is authorized to issue subpoenas for files, records, and papers deemed pertinent to any investigation, and to subpoena witnesses at the request of either party. All subpoenas to be issued relating to the hearing will be issued by the Grievance Committee. In the event that either party in a case has difficulty in obtaining a witness's agreement to testify or to produce files, records and papers, such party must request in writing the issuance of a subpoena at least ten (10) days before the date of the hearing. The request for a subpoena must include the name of the witness and/or a description sufficiently specific to identify the documents in question. The request shall be forwarded to the Office of Human Resources. The Chairman of the State Employee Grievance Committee, for the Committee, issues the subpoena; however, the service of the subpoena is the responsibility of the requesting party. Subpoenaed documents shall be made available at least five (5) days before the date of the hearing to the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for pursuing any judicial enforcement of that subpoena. Any reasonable expenses incurred by a subpoenaed witness shall be paid by the requesting party.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-775.11. Place of Hearings.**

Committee hearings shall be held in appropriate facilities within the Office of Human Resources, Columbia, South Carolina, unless otherwise specified by the Committee.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-775.12. Forms to be Used.**

The Office of Human Resources shall develop standard forms to be used in all grievance procedures.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-775.13. Members of Committee.**

The State Employee Grievance Committee shall consist of 18 members who shall be appointed by the State Budget and Control Board in accordance with the Act. A quorum shall consist of at least four Committee members. No hearing may be conducted without a quorum.

#### **19-775.14. Attendance at Hearings.**

All proceedings of the Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act. If the hearing is held in executive session, only the parties involved in a hearing, the Committee Attorney and officials approved by the Chairman of the Committee may attend.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994.

#### **19-775.15. Recording of Proceedings.**

All proceedings before the Committee shall be recorded by the Office of Human Resources. The tape shall be preserved in accordance with the retention schedule of the Office of Human Resources. The tapes will not be transcribed unless the Budget and Control Board, the Chairman, the Committee Attorney, or Committee members request such transcription. However, if the agency or appellant requests either a transcript or a copy of the transcript, the requesting party must pay the costs of the transcript or copy.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995.

#### **19-775.16. Representation by Advisor or Counsel.**

Each employee involved in an appeal before the Committee may be represented by an advisor or legal counsel.

**19-775.17. Conduct of Proceedings.**

As presiding officer, the Committee Chairman or his designee shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The Committee will give effect to rules of privilege recognized by law. Parties will abide by the Chairman's decisions, unless a Committee member(s) voices disagreement. If this occurs, the Chairman will call a short recess to consult with the Committee and with the Committee Attorney. After consultation, the majority vote of the Committee will determine such decisions except that if the matter involves a question of law or the order of testimony, the Committee Attorney shall make the final decision and ruling. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions, and all legal issues. The parties shall be bound by the decisions of the Committee Chairman or Committee Attorney insofar as such hearings are concerned.

**19-775.18. Order of Appearance.**

The employee shall present his case first followed by the agency. The employee will have the option of closing first or last.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994.

**19-775.19. Oath or Affirmation of Witnesses.**

The testimony of witnesses shall be under oath or affirmation.

**19-775.20. Presence of Witnesses in Hearing Room.**

Witnesses other than representatives that will be witnesses shall be sequestered and shall not be in the hearing room except for preliminary comments, the Committee's opening statement, and that witness' testimony in a public hearing or a hearing held in executive session.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987; State Register Volume 18, Issue No. 2, eff February 25, 1994.

**19-775.21. Cross-examination of Witnesses.**

Witnesses may be cross-examined.

**19-775.22. Depositions.**

The testimony of a witness who cannot appear in person may be submitted in the form of a deposition de bene esse.

**19-775.23. Recordation of Votes by Committee Members.**

The vote of each member of the Committee on the merits of the grievance shall be recorded. Any member agreeing with the majority decision but differing with the rationale may prepare a concurring decision. Any member voting in the minority may prepare a dissenting opinion.

**19-775.24. Decision of Committee.**

The final decision of the State Employee Grievance Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision.

**19-775.25. Assistance by Committee Attorney.**

Upon the Chairman's request, the Committee Attorney may assist the Committee in the preparation of its findings of fact and conclusions of law. The Committee Attorney may be present during the Committee's deliberations on its decision only upon the request of the presiding officer.

**19-775.26. Committee Decision on Appeal.**

The Committee shall render its decision on the appeal within twenty calendar days of the conclusion of the hearing.



**19-775.27. Transmittal of Decision; Finality.**

The decision of the Committee members shall be transmitted in writing to the employee and the employing agency and shall be final in terms of administrative review.

**19-775.28. Delivery of Notices.**

All notices prescribed by the Grievance Act and these rules shall be by first class mail or interagency mail unless hand-delivered. All notices and correspondence pertaining to a grievance appeal shall be sent to the appellant's and the agency's designated legal counsel or advisor except as otherwise provided herein.

**19-775.29. Confidentiality of Records.**

The official record on each case and all related correspondence and memoranda shall be maintained in a confidential file by the Budget and Control Board and the State Employee Grievance Committee.

**19-775.30. Disqualification of Committee Members.**

Whenever a grievance before the Committee is initiated by or involves an employee of an agency of which a Committee member also is an employee, such member shall be disqualified from participating in the hearing.

**19-775.31. Election of Chairman and Secretary of Committee.**

A chairman and a secretary shall be elected from the membership of the Committee each year after approval of membership of new members by the Budget and Control Board. A meeting for election of officers shall be held as soon as practicable after appointments are made.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994.

**19-775.32. Presiding Officer.**

The Chairman may designate some other member of the Committee to serve as the presiding officer at a particular hearing in his absence.

**19-775.33. Date and Time of Hearing; Postponement.**

Grievance hearings will be conducted on the date and at the time scheduled unless the Committee, acting collectively or through its Chairman or designee, grants a postponement based upon extenuating circumstances such as illness or death. If neither party has requested a postponement or a requested postponement has been denied and either party fails to appear, the hearing will be held as scheduled. In such cases, the Committee will base its decision on a review of the record and a presentation of the case by the party present.

**HISTORY:** Amended by State Register Volume 11, Issue No. 5, eff May 22, 1987..

**19-775.34. Promulgation of Regulations.**

The Committee and the Director of the Office of Human Resources may recommend to the Budget and Control Board that it promulgate these and other regulations as may be necessary to carry out the provisions of the State Employee Grievance Procedure Act of 1982.

**HISTORY:** Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994; State Register Volume 19, Issue No. 6, eff June 23, 1995..

**ARTICLE 8**

**DATA REPORTING REQUIREMENTS PERTAINING TO SOUTH CAROLINA HOSPITALS**

(Statutory Authority: 1976 Code §§ 44-6-170, 44-6-175 and 44-6-200, as amended)

**Editor's Note**

The following regulations became effective June 22, 1990, unless otherwise noted.

### **19–800. Definitions.**

Hospitals: is as defined in South Carolina State Certification of Need and Health Facility Licensure Act, Section 44–7–130.

Calendar quarter: is defined as any one of the following: January through March, April through June, July through September, and October through December.

Discharged Patient: is any patient admitted to a hospital for inpatient services or any maternal delivery or newborn service.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.

### **19–801. Financial and Utilization Data (Annual).**

A. All required items shall be reported to the Office of Research and Statistics, South Carolina Budget and Control Board, for the period October first through September thirtieth by March first of the following year.

B. The formats for submission of the required items are:

(1) “Annual Hospital Financial Data Report” or other format as specified by the Office of Research and Statistics for financial items;

(2) “Joint Annual Report of Hospitals” or other format as specified by the Office of Research and Statistics for utilization items.

C. When a format other than the Annual Report in B(1) or B(2) above is specified, the Office of Research and Statistics shall provide the format to hospitals thirty days prior to implementation of that format.

D. Financial data elements pertaining to patient charges shall be reported for “inpatients only” and for “all patients, inpatients and outpatient.”

E. The financial and utilization data elements to be collected are:

(1) Gross patient revenue;

(2) Gross revenue from Medicare;

(3) Gross revenue from Medicaid;

(4) Gross revenue from Medically Indigent Assistant Program;

(5) Government contractual adjustments for:

(a) Medicare;

(b) Medicaid;

(c) Medically Indigent Assistant Program;

(d) TriCare; and

(e) Other Contractual Allowances;

(6) Total direct costs of medical education:

(a) Reimbursed, and

(b) Unreimbursed;

(7) Total indirect costs of medical education:

(a) Reimbursed, and

(b) Unreimbursed;

(8) Total costs of care for medically indigent:

(a) Reimbursed, and

(b) Unreimbursed;

(9) Bad debt expenses, net of recovery;

(10) Total patient days;

(11) Average length of stay;

(12) Total outpatient visits.

F. Hospitals shall submit to the Office of Research and Statistics a copy of their "Medicare Cost Reports" in accordance with the submission requirements of the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services.

G. Hospitals shall maintain documentation to substantiate all items governed by R.19.801 for a period of three years from the March first deadline date.

**HISTORY: Amended by State Register Volume 19, Issue No. 7, eff July 28, 1995; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

### **19-810. Medical Record Extract Information.**

A. The data elements will be specified by the Data Oversight Council through Principles and Protocol for the Release of Health Care Data. The Principles and Protocol for the Release of Health Care Data shall allow for review and input by interested parties on the data elements to be reported taking into consideration all applicable federal, state laws and regulations. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

B. Patient records submitted shall be in accordance with, but not limited to the specifications, promulgated by the Secretary of the Department of Health and Human Services for the United States of America in accordance with the authority to designate health care codes and transactions under the Health Insurance Portability and Accountability Law of 1996, as well as under the specifications of the Director of the Centers for Medicare and Medicaid Services and as specified in the Medically Indigent Assistance Act for the State of South Carolina.

C. Records shall be submitted directly to the Office of Research and Statistics on magnetic media or via some other system made available by the Office of Research and Statistics in a format to be specified by the Office of Research and Statistics and provided to hospitals one hundred twenty days prior to implementation of that format.

D. One record for each inpatient discharged during the calendar month (including newborns) shall be submitted. Hospitals shall submit at least ninety percent of their monthly discharge records within forty-five days after the close of the month with exception made for conditions beyond the hospital's control. Hospitals shall submit one hundred percent of their discharge records within forty-five days after the close of the following month with exception made for conditions beyond the hospital's control.

E. Reporting of required items shall meet ninety-nine percent item completeness.

F. Completed items shall meet ninety-nine and five tenths percent accuracy as determined by edit specifications set by the Office of Research and Statistics.

G. Hospitals changing hardware/software or processors, which would necessitate a change in tape submission procedure, shall:

(1) Notify the Office of Research and Statistics in writing at least sixty days prior to change and submit a test tape meeting completeness and accuracy requirements within one hundred twenty days after the change is accomplished; and

(2) Make provisions for continued reporting of data during change/test period so that data submission complies with R.19-810C.

H. To insure complete reporting, each hospital shall submit monthly, in writing, to the Office of Research and Statistics within forty-five days of the close of the month, a report of the number of inpatients discharged during the month (including newborns) and the number of inpatient days corresponding to those discharges. The hospital shall report using a format specified by the Office of Research and Statistics and provided to hospitals thirty days prior to implementation of the format.

I. The hospital's designee shall have access to the hospital's data elements in section R.19-810A.

**HISTORY: Amended by State Register Volume 19, Issue No. 7, eff July 28, 1995; State Register Volume 29, Issue No. 6, eff June 24, 2005; State Register Volume 32, Issue No. 4, eff April 25, 2008.**

## **19-820. Penalties for Failure to Meet Requirements.**

A. Pursuant to South Carolina Code Section 44-6-170G, the Office may assess a civil fine for failure to comply with these regulations.

B. Failure to provide one record for each discharge (including newborns) according to R.19.810D or meet quality and item-completeness standards set forth in R.19.810E and R.19.910F.

(1) First occurrence: the Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The hospital Chief Executive Officer shall reply in writing as to the reasons for non-compliance and provide a summary of measures implemented to insure future compliance. Full compliance shall occur within two subsequent monthly submissions;

(2) Subsequent occurrences: Fines may be followed as in subsection C.(2) below.

C. Failure to meet time frames for submission of required medical record extract information and supporting summary utilization data according to R.19.810D and R.19-810H or required financial and utilization items according to R.19.801A.

(1) The Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The hospital shall be granted a two week grace period beginning on the date of the receipt of the letter.

(2) If the hospital fails to comply within the grace period:

(a) The Office of Research and Statistics shall notify the hospital Chief Executive Officer by certified letter of failure to comply. The Chief Executive Officer shall respond in writing to the Office of Research and Statistics within one week of date of receipt as to reasons for non-compliance.

(b) The Office of Research and Statistics may extend the grace period if it deems it warranted (as demonstrated by a good faith effort on the part of the hospital to comply) and shall notify the Chief Executive Officer in writing.

(c) Hospitals failing to comply within the grace period(s) may be fined as follows and the total fine may not exceed ten thousand dollars:

(i) First Occurrence \$ 100

(ii) Second Occurrence \$1,000

(iii) Third Occurrence \$5,000

(d) A six-month grace period from the date these regulations become effective shall be granted by the Office of Research and Statistics before R.19.820 is enforced.

(e) The fines as levied as in C(2)(c) above shall be reset to "first occurrence" levels beginning three years from the date of first occurrence or upon change of ownership of the hospital or upon change of the hospital's Chief Executive Officer.

D. The proposed penalties become the final agency decision within ten days after the certified letter to the administrator unless the Chief Executive Officer requests a reconsideration of the penalty in writing within the ten day grace period from the Executive Director of the Budget and Control Board or his/her designee. When such a request is submitted:

(1) The burden of proof for contested penalties will be upon the hospital; and

(2) The Executive Director of the Budget and Control Board or his/her designee must respond by certified letter to the Chief Executive Officer's request within thirty days from the receipt of the request.

**HISTORY: Amended by State Register Volume 19, Issue No. 7, eff July 28, 1995; State Register Volume 29, Issue No. 6, eff June 24, 2005; State Register Volume 32, Issue No. 4, eff April 25, 2008.**

## **ARTICLE 9 RETIREMENT DIVISION**

### **Editor's Note**

2008 Act No. 311, Section 55, provides as follows:

"Upon the effective date of this act, Regulations 19-900 through 19-997 of the South Carolina Code of Regulations shall have no application whatsoever to the operation of Title 9 of the 1976 Code."

**SUBARTICLE 1**  
**SOUTH CAROLINA RETIREMENT SYSTEM**

Statutory Authority: 1976 Code § 9-1-290

**19-900. Definitions.**

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Elective or appointive officers" shall mean those elected or appointed to office where the term of office is fixed by Statute or the Constitution.
- (2) "School year" shall be considered the same as fiscal year, that is beginning July 1 and ending the following June 30th.

**19-901. Membership in the System.**

A. School Bus Drivers.

School bus drivers who are awarded contracts on the lowest or most responsible bid and are paid on a mileage basis are not eligible for membership in the Retirement System. When they are paid salaries by County or School District funds, bus drivers will come under the Act only when the County or School District comes into the System.

B. Employees of a County Library.

Employees of a county library paid by funds transferred by a county to a society then paid to employees shall be ineligible for membership.

**19-903. Records of Members Confidential.**

All records of members, active and inactive, maintained by the South Carolina Retirement System are classified as confidential and shall not be disclosed to third parties, except State and Federal authorities and then only at the discretion of the Director of the South Carolina Retirement System.

**19-905. Creditable Service.**

A. Prior Service.

- (1) Employees paid compensation by officials under the fee system shall be ineligible for prior service credits.
- (2) Prior service shall be granted for teaching in orphanage schools of the State provided the school was approved for State Aid beginning with the school year 1931-1932.
- (3) No credit shall be allowed for educational leave prior to establishment of the System.
- (4) Method of Employer Contribution for Previous Service upon Initial Participation in the System.

In accordance with § 9-1-470 and 9-1-860 of the Retirement Act the Budget and Control Board does hereby authorize the initial and collective employer contribution for previous service to be paid in a lump sum or in installments over such period, not to exceed ten years, as the Board may, under uniform rules, determine.

B. Non-Member Service.

- (1) Retirement credit shall not be granted to employees of formerly private entities for that period of time prior to becoming a public entity.
- (2) Rate of Contribution for Non-Member Service

The State Budget and Control Board, acting in accordance with § 9-1-440 and 9-1-860 of the South Carolina Code of Laws, as amended, hereby adopts an employee rate of four percent of his annual earnable rate of compensation, or four percent of the average of the three highest fiscal years of salary whichever is greater, at the time of payment, for each year of non-member service

established and a proportionate part thereof for a portion of a year. The employer rate of contribution for non-member service shall be equal to the employee rate.

C. No Retirement Credit when Remuneration for Services is limited to Per Diem Payments.

By administrative policy, the South Carolina Retirement System has interpreted § 9-1-10, paragraphs 4 and 16, in a manner which precludes retirement credit when the payment for service rendered is only in the form of per diem. The granting of retirement credit for services rendered when the remuneration is limited to a per diem payment would impose a significant financial burden on the State; therefore, in accordance with § 9-1-290 of the Retirement Act the Budget and Control Board hereby determines that services rendered which are remunerated solely by per diem shall not be considered creditable service for retirement purposes.

D. Employees drawing Workmen's Compensation who are on leave of absence for a limited period shall be allowed to voluntarily contribute on their contractual salary to be matched by the employer.

E. Teaching by students in institutions of higher learning who taught and received salaries while doing graduate work shall not be considered creditable service.

F. Fees.

Credit will be allowed Clerks of Court and others for fees paid them by the public only in cases where the member is able to present a written record of such fees.

(1) Certified copies of Federal Income Tax Returns shall be included among documents to be considered in the matter of proof of income of members who pay contributions on fees received.

(2) Employer and Employee Contributions from Fees based on Net Fees.

When compensation includes fees, the amount to be paid by the employee and matched by the employer shall be based upon the net fees and not the gross fees. Net fees means gross fees less necessary operating expenses and includes only those fees which the employee may lawfully retain (§ 9-1-10(16)).

G. Evaluation of Maintenance Included in Salary.

Under § 9-1-10, S. C. Code 1976, earnable compensation includes maintenance and other things of value, etc. Where a teacher or employee's salary includes maintenance, the Board of Trustees or governing Board are authorized to evaluate such services in terms of dollars which shall be included as salary by the Retirement Board. This evaluation shall generally be subject to revision by the Retirement Board. The contribution shall be based on the sum of money and of the evaluation of maintenance where such maintenance is furnished by a State Agency or employer agency.

H. Sick Leave.

A member on sick leave without pay may establish up to 90 days if requested within 12 months of return to work. Contributions shall be based on salary immediately prior to the leave period.

### **19-908. Administrative Service Fee.**

Effective July 1, 1981, the Retirement Systems are authorized by the Budget and Control Board to charge members a fee of \$30 to establish other creditable retirement service. The fee is to defray part of the costs involved in verifying, documenting, and making necessary calculations for members to establish out-of-state credit, non-member service, prior service, military credit and to re-establish withdrawn credit.

### **19-910. Termination Pay.**

When the end of the fiscal year for pay purposes for weekly and bi-weekly paid employees does not coincide with the end of the fiscal year and a member wishes to retire July 1:

- (1) Termination pay shall be based on rate of pay at end of pay period year.
- (2) Salary used in Retirement Formula Calculation terminates with last day of pay period year.
- (3) Retirement is effective July 1.
- (4) Employee may continue working during gap period at new salary rate.

### **19-912. Change of Option.**

Retirees cannot be granted privilege of changing option after benefit payments are begun.

**19-915. Cost of Living Increases.**

A. On March 26, 1974, the Board approved three lifetime cost of living increases of four percent per annum commencing July 1, 1975.

B. On November 23, 1979, the Board approved a cost of living increase of 4% for retired State employees to be effective July 1, 1980.

**19-917. No Designated Beneficiary.**

If a member dies without designating a beneficiary or in case the first named beneficiary dies prior to the member, the amount that would have been paid to the beneficiary shall be paid to the estate of the deceased member.

**19-918. Pro rata Benefits Paid at Death.**

If a retiree dies between the dates benefit payments are due, the estate of the retiree shall receive on a pro rata basis any unpaid portion of the monthly benefits.

**19-925. Interest Rate.**

Interest shall be credited to the account of each member once each year as of June 30, on the basis of the balance in the account of each member as of the previous June 30. Upon the death, retirement, or termination of a member, interest shall be figured to the end of the month immediately preceding the date of refund or retirement, interest being based on the balance in such member's account as of the June 30 immediately preceding the date of refund or retirement.

**19-926. Liquidation of Unfunded Accrued Liability Limited to 35 Years.**

The Board authorized the actuary to redetermine the accrued liability effective July 1, 1972 so as to accomplish the liquidation of the unfunded accrued liability over a period of not more than 35 years.

**19-927. Unisex Option Factors Adopted.**

Effective January 1, 1982, Unisex Option Factors shall be used in actuarially determining retirement benefits.

**19-929. Group Life Insurance Plan.**

A. Establishment of Group Life Insurance Plan.

The Group Life Insurance Plan for members of the South Carolina Retirement System, hereinafter referred to as the "Plan", is hereby established and created, for the purpose of providing group life insurance for the payment of the benefits provided by § 9-1-1770 of the laws governing said System.

B. Group Life Insurance Plan Reserve Fund.

A separate fund, to be known as the Group Life Insurance Plan Reserve Fund, is hereby established within the South Carolina Retirement System, hereinafter referred to as the "Retirement System", to be held in trust by this Board. Such fund shall consist of all premiums paid by the employers and other moneys received and paid into the fund for group term life insurance purposes, and of the investment earnings upon such moneys, and shall be used only to pay the group term life insurance prescribed by section C hereof. Concurrent with the determination of the initial liability of the Plan for the balance of the fiscal year on and after the effective date of insurance, for the group term life insurance provided and to be paid for pursuant to this Plan, there shall be segregated and transferred from the Employer Annuity Accumulation Fund of the Retirement System to the reserve fund created by this section such amounts as shall be determined by the actuary to be necessary to pay anticipated group term life insurance claims. Subsequent segregations and transfers shall be made as shall be required to pay the insurance prescribed by section C hereof from the reserve fund provided by this section.

C. Insurance Payable in the Event of Death.

In the event of the death of a member who has met the eligibility requirements set forth in § 9-1-1770 on or after the effective date of insurance, an amount of insurance equal to the death benefit provided by § 9-1-1770 shall be paid to the person nominated by the member in accordance with the provisions of § 9-1-1770 or to the member's estate.

D. Premiums.

The actuary shall investigate the claim experience of the Plan as provided by § 9-1-250. On the basis of such investigations and upon the recommendation of the actuary, as provided in § 9-1-1210, this Board shall certify the premium rates computed to be necessary to fund the group term life insurance authorized to be paid by the Plan. As soon as practicable after the close of each fiscal year, this Board shall determine the premium which the employers participating in the Plan are required to pay into the reserve fund to discharge the obligations of the Plan for the past fiscal year.

E. Effective Date of Insurance.

Each qualified member of the Retirement System is to be insured as provided herein effective commencing as of June 19, 1973 and while in effect this insurance coverage shall constitute a contractual relationship.

**SUBARTICLE 2**  
**POLICE OFFICERS' RETIREMENT SYSTEM**

Statutory Authority: 1976 Code § 9-11-30(9)

**19-933. Records of Members Confidential.**

All records of members, active and inactive, maintained by the Police Officers' Retirement System are classified as confidential and shall not be disclosed to third parties, except State and Federal authorities and then only at the discretion of the Director of the Retirement Systems.

**19-935. Creditable Service.**

A. Workmen's Compensation.

Members of the Police Officers' Retirement System drawing Workmen's Compensation on leave of absence may voluntarily contribute during leave of absence, based on contractual salary and their employer will match.

B. Sick Leave.

A member on sick leave without pay may establish up to 90 days if requested within 12 months of return to work. Contributions shall be based on salary immediately prior to the leave period.

**19-938. Administrative Service Fee.**

Effective July 1, 1981, the Retirement Systems are authorized by the Budget and Control Board to charge members a fee of \$30 to establish other creditable retirement service. The fee is to defray part of the costs involved in verifying, documenting, and making necessary calculations for members to establish out-of-state credit, non-member service, prior service, military credit and to re-establish withdrawn credit.

**19-940. Termination Pay.**

When the end of the fiscal year for pay purposes for weekly and bi-weekly paid employees does not coincide with the end of the fiscal year and a member wishes to retire July 1:

- (1) Termination pay shall be based on rate of pay at end of pay period year.
- (2) Salary used in Retirement Formula Calculation terminates with last day of pay period year.
- (3) Retirement is effective July 1.
- (4) Employee may continue working during gap period at new salary rate.

**19-942. Change of Option.**

Retirees cannot be granted privilege of changing option after benefit payments are begun.



**19-947. No Designated Beneficiary.**

If a member dies without designating a beneficiary or in case the first named beneficiary dies prior to the member, the amount that would have been paid to the beneficiary shall be paid to the estate of the deceased member.

**19-948. Pro rata Benefits Paid at Death.**

If a retiree dies between the dates benefit payments are due, the estate of the retiree shall receive on a pro rata basis any unpaid portion of the monthly benefits.

**19-955. Interest Rate.**

Interest shall be credited to the account of each member once each year as of June 30, on the basis of the balance in the account of each member as of the previous June 30. Upon the death, retirement, or termination of a member, interest shall be figured to the end of the month immediately preceding the date of refund or retirement, interest being based on the balance in such member's account as of the June 30 immediately preceding the date of refund or retirement.

**19-956. Liquidation of Unfunded Accrued Liability Limited to 35 Years.**

The Board authorized the actuary to redetermine the accrued liability effective July 1, 1972 so as to accomplish the liquidation of the unfunded accrued liability over a period of not more than 35 years.

**19-957. Unisex Option Factors Adopted.**

Effective January 1, 1982, Unisex Option Factors shall be used in actuarially determining retirement benefits.

**19-959. Group Life Insurance Plan.**

A. Establishment of Group Life Insurance Plan.

The Group Life Insurance Plan for members of the South Carolina Police Officers' Retirement System, hereinafter referred to as the "Plan", is hereby established and created, for the purpose of providing group life insurance for the payment of the benefits provided by § 9-11-120 of the laws governing said System.

B. Group Life Insurance Plan Reserve Fund.

A separate fund, to be known as the Group Life Insurance Plan Reserve Fund, is hereby established within the South Carolina Police Officers' Retirement System, hereinafter referred to as the "Retirement System", to be held in trust by this Board. Such fund shall consist of all premiums paid by the employers and other moneys received and paid into the fund for group term life insurance purposes, and of the investment earnings upon such moneys, and shall be used only to pay the group term life insurance prescribed by section C hereof. Concurrent with the determination of the initial liability of the Plan for the balance of the fiscal year on and after the effective date of insurance, for the group term life insurance provided and to be paid for pursuant to this Plan, there shall be segregated and transferred from the Employer Annuity Accumulation Fund of the Retirement System to the reserve fund created by this section such amounts as shall be determined by the actuary to be necessary to pay anticipated group term life insurance claims. Subsequent segregations and transfers shall be made as shall be required to pay the insurance prescribed by section C hereof from the reserve fund provided by this section.

C. Insurance Payable in the Event of Death.

In the event of the death of a member who has met the eligibility requirements set forth in § 9-11-120 on or after the effective date of insurance, an amount of insurance equal to the death benefit provided by § 9-11-120 shall be paid to the person nominated by the member in accordance with the provisions of § 9-11-120 or to the member's estate.

D. Premiums.

The actuary shall investigate the claim experience of the Plan as provided by § 9-11-30. On the basis of such investigations and upon the recommendation of the actuary, as provided in § 9-11-120, this Board shall certify the premium rates computed to be necessary to fund the group term life insurance authorized to be paid by the Plan. As soon as practicable after the close of each fiscal year, this Board

shall determine the premium which the employers participating in the Plan are required to pay into the reserve fund to discharge the obligations of the Plan for the past fiscal year.

E. Effective Date of Insurance.

Each qualified member of the Retirement System is to be insured as provided herein effective commencing as of June 19, 1973 and while in effect this insurance coverage shall constitute a contractual relationship.

**SUBARTICLE 3**  
**RETIREMENT SYSTEM FOR MEMBERS OF GENERAL ASSEMBLY**

Statutory Authority: 1976 Code § 9-9-308(8)

**19-961. Membership in the System.**

The Board acted 4-5-79 to adopt the Attorney General's opinion that former members of the General Assembly may return to covered employment and still remain special contributing members of the Retirement System for Members of General Assembly.

**19-963. Records of Members Confidential.**

All records of members, active and inactive, maintained by the South Carolina Retirement System for Members of General Assembly are classified as confidential and shall not be disclosed to third parties, except State and Federal authorities and then only at the discretion of the Director of the South Carolina Retirement System.

**19-965. Creditable Service.**

Members of the General Assembly, Clerks, and Attaches shall be entitled to a full year's service regardless of the length of the General Assembly Session during any one year in which they serve.

**19-966. Administrative Service Fee.**

Effective July 1, 1981, the Retirement Systems are authorized by the Budget and Control Board to charge members a fee of \$30 to establish other creditable retirement service. The fee is to defray part of the costs involved in verifying, documenting, and making necessary calculations for members to establish out-of-state credit, non-member service, prior service, military credit and to re-establish withdrawn credit.

**19-967. Change of Option.**

Retirees cannot be granted privilege of changing option after benefit payments are begun.

**19-969. No Designated Beneficiary.**

If a member dies without designating a beneficiary or in case the first named beneficiary dies prior to the member, the amount that would have been paid to the beneficiary shall be paid to the estate of the deceased member.

**19-970. Pro rata Benefits Paid at Death.**

If a retiree dies between the dates benefit payments are due, the estate of the retiree shall receive on a pro rata basis any unpaid portion of the monthly benefits.

**19-971. Interest Rate.**

Interest shall be credited to the account of each member once each year as of June 30, on the basis of the balance in the account of each member as of the previous June 30. Upon the death, retirement, or termination of a member, interest shall be figured to the end of the month immediately preceding the date of refund or retirement, interest being based on the balance in such member's account as of the June 30 immediately preceding the date of refund or retirement.

**19-972. Liquidation of Unfunded Accrued Liability Limited to 35 Years.**

The Board authorized the actuary to redetermine the accrued liability effective July 1, 1972 so as to accomplish the liquidation of the unfunded accrued liability over a period of not more than 35 years.

**19-973. Unisex Option Factors Adopted.**

Effective January 1, 1982, Unisex Option Factors shall be used in actuarially determining retirement benefits.

**19-979. Group Life Insurance Plan.**

A. Establishment of Group Life Insurance Plan.

The Group Life Insurance Plan for members of the Retirement System for Members of the General Assembly, hereinafter referred to as the "Plan", is hereby established and created, for the purpose of providing group life insurance for the payment of the benefits provided by § 9-9-100 of the laws governing said System.

B. Group Life Insurance Plan Reserve Fund.

A separate fund, to be known as the Group Life Insurance Plan Reserve Fund, is hereby established within the Retirement System for Members of the General Assembly, hereinafter referred to as the "Retirement System", to be held in trust by this Board. Such fund shall consist of all premiums paid by the employers and other moneys received and paid into the fund for group term life insurance purposes, and of the investment earnings upon such moneys, and shall be used only to pay the group term life insurance prescribed by section C hereof. Concurrent with the determination of the initial liability of the Plan for the balance of the fiscal year on and after the effective date of insurance, for the group term life insurance provided and to be paid for pursuant to this Plan, there shall be segregated and transferred from the Employer Annuity Accumulation Fund of the Retirement System to the reserve fund created by this section such amounts as shall be determined by the actuary to be necessary to pay anticipated group term life insurance claims. Subsequent segregations and transfers shall be made as shall be required to pay the insurance prescribed by section C hereof from the reserve fund provided by this section.

C. Insurance Payable in the Event of Death.

In the event of the death of a member who has met the eligibility requirements set forth in § 9-9-100 on or after the effective date of insurance, an amount of insurance equal to the death benefit provided by § 9-9-100 shall be paid to the person nominated by the member in accordance with the provisions of § 9-9-100 or to the member's estate.

D. Premiums.

The actuary shall investigate the claim experience of the Plan as provided by § 9-9-30. On the basis of such investigations and upon the recommendation of the actuary, this Board shall certify the premium rates computed to be necessary to fund the group term life insurance authorized to be paid by the Plan. As soon as practicable after the close of each fiscal year, this Board shall determine the premium which the employers participating in the Plan are required to pay into the reserve fund to discharge the obligations of the Plan for the past fiscal year.

E. Effective Date of Insurance.

Each qualified member of the Retirement System is to be insured as provided herein effective commencing as of June 19, 1973 and while in effect this insurance coverage shall constitute a contractual relationship.

**SUBARTICLE 4  
RETIREMENT SYSTEM FOR JUDGES AND SOLICITORS**

**19-983. Records of Members Confidential.**

All records of members, active and inactive, maintained by the Retirement System for Judges and Solicitors are classified as confidential and shall not be disclosed to third parties, except State and Federal authorities, and then only at the discretion of the Director of the Retirement Systems.

**19-984. Transfer of Service Credit.**

An active contributing member is eligible to transfer all or any part of service credited, or which could have been credited, under another State Retirement System. A member is authorized to make only one such transfer, except that a member at employment termination, who does not qualify for a benefit under the Judicial-Solicitor Retirement System, may transfer credit back to the appropriate system.

Duplicate service credit under the same system is not permitted. A member shall not receive more than 1 year service credit during a twelve month period under one retirement system.

Service credit transfers from the General Assembly Retirement System (GARS) shall be included and counted in the total under the 22 year maximum service credit provision of Section 9-9-60 of the 1976 Code of Laws. Once a service credit transfer from the GARS is made, a member may not then make a contribution to re-establish that credit in the GARS.

**19-986. Administrative Service Fee.**

Effective July 1, 1981, the Retirement Systems are authorized by the Budget and Control Board to charge members a fee of \$30 to establish other creditable retirement service. The fee is to defray part of the costs involved in verifying, documenting, and making necessary calculations for members to establish out-of-state credit, non-member service, prior service, military credit and to re-establish withdrawn credit.

**19-987. Change of Option.**

Retirees cannot be granted privilege of changing option after benefit payments are begun.

**19-990. No Designated Beneficiary.**

If a member dies without designating a beneficiary or in case the first named beneficiary dies prior to the member, the amount that would have been paid to the beneficiary shall be paid to the estate of the deceased member.

**19-991. Pro rata Benefits Paid at Death.**

If a retiree dies between the dates benefit payments are due, the estate of the retiree shall receive on a pro rata basis any unpaid portion of the monthly benefits.

**19-995. Interest Rate.**

Interest shall be credited to the account of each member once each year as of June 30, on the basis of the balance in the account of each member as of the previous June 30. Upon the death, retirement, or termination of a member, interest shall be figured to the end of the month immediately preceding the date of refund or retirement, interest being based on the balance in such member's account as of the June 30 immediately preceding the date of refund or retirement.

**19-996. Liquidation of Unfunded Accrued Liability Limited to 35 Years.**

The Board authorized the actuary to redetermine the accrued liability effective July 1, 1972 so as to accomplish the liquidation of the unfunded accrued liability over a period of not more than 35 years.

**19-997. Unisex Option Factors Adopted.**

Effective January 1, 1982, Unisex Option Factors shall be used in actuarially determining retirement benefits.

**ARTICLE 10**  
**DATA REPORTING REQUIREMENTS PERTAINING TO SUBMISSION**  
**OF AMBULATORY ENCOUNTER DATA**

(Statutory Authority: 1976 Code § 44-6-170)

**19-1001. Definitions.**

Data Elements: refers to any specific characteristic, usually encoded, describing a patient, the services provided to a patient, the health care facility, and/or the professional rendering the services, during a medical encounter.

Outpatient: refers to any person receiving care in a health care setting that does not require admission to a hospital. This definition includes observation patients.

Ambulatory Encounter Level Data: refers to data gathered or organized by each episode of medical care provided to an outpatient in a health care setting.

Health Care Setting: includes but is not limited to hospitals, ambulatory surgical facilities, home health agencies and providers of the following ambulatory services: radiation therapy, cardiac catheterization, lithotripsy, magnetic resonance imaging and positron emission therapy and other providers offering services with equipment requiring a Certificate of Need.

**HISTORY: Added by State Register Volume 19, Issue No. 7, eff July 28, 1995; Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

**19-1010. Health Care Providers Required to Report Ambulatory Encounter Level Data to the Office of Research and Statistics.**

A. Hospital based and freestanding Ambulatory Surgical Facilities as defined by the State Certificate of Need and Health Facility Licensure Act, Section 44-7-130.

B. Hospital Emergency Department included in a licensed facility under the State Certification of Need and Health Facility Licensure Act, Section 44-7-130.

C. Hospitals providing observation services for outpatients.

D. Any health care setting providing on an outpatient basis the following services: radiation therapy, cardiac catheterizations, lithotripsy, magnetic resonance imaging and positron emission therapy. Additionally, any other provider offering services with equipment requiring a Certificate of Need is required to report to the Office of Research and Statistics.

E. Home health agencies licensed under the "Licensure of Home Health Agencies Act."

**HISTORY: Added by State Register Volume 19, Issue No. 7, eff July 28, 1995; Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

**19-1020. Medical Record Extract Information.**

A. Ambulatory encounter level data for all outpatients shall be coded in accordance with, but not limited to, the specifications promulgated Secretary of the Department of Health and Human Services for the United States of America in accordance with the authority to designate health care codes and transactions under the Health Insurance Accountability and Portability Law of 1996 (HIPAA), as well as under the specifications of the Director of the Centers for Medicare and Medicaid Services and as specified in Medically Indigent Assistance Act for the State of South Carolina.

B. Data elements to be reported will be specified by the Data Oversight Council through *Principles and Protocol for the Release of Health Care Data*. The *Principles and Protocol for the Release of Health Care Data's* process for identifying data elements to be reported will include means for review and input by interested parties taking into consideration all applicable federal and state laws and regulations. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

C. Ambulatory encounter level data for all outpatients shall be submitted directly to the Office of Research and Statistics and provided to health care providers one hundred twenty days prior to implementation of that format.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995; Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005.

### **19-1030. Criteria for Data Submission Timeliness and Items Completeness and Accuracy.**

A. One record for each outpatient ambulatory encounter during the calendar month shall be submitted. Health care providers covered by these regulations shall submit at least ninety percent of their monthly ambulatory patient encounter records within forty-five days after the close of the month with exception made for conditions beyond the health care provider's control. Health care providers covered by these regulations shall submit one hundred percent of their patient encounter records within forty-five days after the close of the following month with exception made for conditions beyond the health care provider's control.

B. Reporting of required items shall meet ninety-nine percent item completeness.

C. Completed items shall meet ninety-nine and five-tenths percent accuracy as determined by edit specifications set by the Office of Research and Statistics.

D. Health care providers covered by these regulations changing hardware/software or processors which would necessitate a change in submission procedure shall:

(1) Notify the Office of Research and Statistics in writing at least sixty days prior to change and submit a test tape meeting completeness and accuracy requirements within one hundred twenty days after the change is accomplished,

(2) Make provisions for continued reporting of data during change/test period so that data submission complies with these regulations.

E. To insure complete reporting, each health care provider covered by these regulations shall submit monthly, in writing, to the Office of Research and Statistics within forty-five days of the close of the month, a report of the number of patient encounters during the month. The health care providers covered by these regulations shall report this information in a format specified by the Office of Research and Statistics and provided to health care providers thirty days prior to implementation of the format.

F. The Office of Research and Statistics will work with individual health care providers to incorporate the inclusion of data elements that are not currently coded into a standard data format during the modification period. The modification period will be for one year from the beginning submission date. See Section 19.1020. The modification period may be extended by Office of Research and Statistics based on changing federal reporting requirements.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005; State Register Volume 32, Issue No. 6, eff June 27, 2008.

### **19-1040. Penalties for Failure to Meet Timeliness, Completion and Accuracy Requirements.**

A. Pursuant to South Carolina Code Section 44-6-170 G, the Office may assess a civil fine for failure to comply with these regulations.

B. Failure to provide one record for each patient encounter according to these regulations or meet accuracy and item-completeness standards set forth in these regulations:

(1) First occurrence: the Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall reply in writing as to the reasons for non-compliance and provide a summary of measures implemented to insure future compliance. Full compliance shall occur within two subsequent monthly submissions;

(2) Subsequent occurrences: fines may be followed as in subsection C (2) below.

C. Failure to meet time frames for submission of required medical record extract information:

(1) The Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall be granted a two-week grace period beginning on the date of the receipt of the letter.

(2) If the health care provider fails to comply within the grace period:

(a) The Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall respond in writing to the Office of Research and Statistics within one week of date of receipt as to reasons for non-compliance.

(b) The Office of Research and Statistics may extend the grace period if it deems it warranted (as demonstrated by a good faith effort on the part of the health care provider), and shall notify the health care provider in writing.

(c) Health care providers covered by these regulations failing to comply within the grace period(s) may be fined as follows and the total fine may not exceed ten thousand dollars:

(i) First occurrence \$ 100

(ii) Second occurrence \$1,000

(iii) Third occurrence \$5,000

A six-month grace period from the date these regulations become effective shall be granted by the Office of Research and Statistics before these regulations are enforced.

The fines as levied in C (2)(c) above shall be reset to "first occurrence" levels beginning three years from the date of first occurrence, or upon change of ownership of the health care provider, or upon change of the chief executive officer.

D. The proposed penalties become the final agency decision within ten days after the certified letter to the administrator unless the health care provider requests a reconsideration of the penalty in writing within the ten day grace period from the Executive Director of the Budget and Control Board or his/her designee. When such a request is submitted:

(1) The burden of proof for contested penalties will be upon the health care provider; and

(2) The Executive Director of the Budget and Control Board or his/her designee must respond by certified letter to the health care provider's request within thirty days from the receipt of the request.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005; State Register Volume 32,, Issue No. 6, eff June 27, 2008.

### **19-1050. Criteria for the Release of Ambulatory Encounter Level Data.**

The data collected under these regulations are subject to Final Regulations State Budget and Control Board Chapter 19, Statutory Authority: 1976 Code Section 44-6-170, Article 11, "Data Release For Medical Ambulatory Encounter Date & Financial Reports" providing for the release of medical encounter data.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995; Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005.

### **19-1060. Confidentiality of Patient and Health Care Provider Identities.**

A. The data collected under these regulations are subject to the confidentiality provisions of Section 44-6-170, as amended, Code of Laws of South Carolina, 1976, and in Final Regulations, State Budget and Control Board, Chapter 19, Statutory Authority: 1976 Code Section 44-6-170, Article 11, "Data Release For Medical Encounter Data & Financial Reports."

B. Failure to comply with confidentiality provisions in these regulations can result in legal action as specified in Section 44-6-180, as amended, Code of Laws of South Carolina, 1976.

**HISTORY:** Added by State Register Volume 19, Issue No. 7, eff July 28, 1995; Amended by State Register Volume 22, Issue No. 6, Part 3, eff July 26, 1998; State Register Volume 29, Issue No. 6, eff June 24, 2005.

**ARTICLE 11**  
**DATA RELEASE FOR MEDICAL ENCOUNTER DATA & FINANCIAL REPORTS**

(Statutory Authority: 1976 Code § 44-6-170)

**19-1101. Definitions.**

Data Element: refers to any specific characteristic, usually encoded, describing a patient, the services provided to a patient or the health care facility, and/or the professional providing the services, during a medical encounter.

Encounter Level Data: refers to data gathered or organized by each contact between a patient and a health care professional in which care was given.

Health Care Facility: includes but is not limited to acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers, including freestanding hemodialysis centers, ambulatory surgical facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habitation centers for persons with intellectual disability or persons with related conditions, and any other freestanding facility offering services or special equipment for which Certificate of Need review is required by state law. For the purposes of this document, Home Health Agencies are included as defined by "Licensure of Home Health Agencies Act," as a public, nonprofit or proprietary organization, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

Health Care Facility Identifiers: the name, address, and/or identification number of a health care facility.

Health Care Insurer: includes but is not limited to domestic and foreign insurers providing accident and health insurance as defined by 38-1-20 of South Carolina Codes of laws, excluding federal and state insurers fund through public funds, including but not limited to, Medicare and Medicaid.

Health Care Insurer Identifiers: the name, address, and/or identification number of a health care insurer.

Health Care Professional: includes but is not limited to physician, physicians assistant, dentist, dental hygienist, dental technician, pharmacist, physical therapist, physical therapists assistant, optometrist, psychologist, respiratory care practitioner, registered nurse, licensed practical nurse, podiatrist, occupational therapist or other health care professional registered or licensed and practicing in South Carolina.

Health Care Professional Identifiers: the name, address, and/or identification number of a health care professional.

Research: means a planned and systematic sociological, psychological, epidemiological, biomedical, economic or other scientific investigations carried out by a government agency, by a scientific research professional associated with a bona fide scientific research organization, by a graduate student currently enrolled in an advanced academic degree curriculum, or other organizations with bona fide research capabilities with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collections that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.

**19-1110. Data Oversight Council Authority.**

A. The Data Oversight Council (DOC) shall classify data elements received by the Office of Research and Statistics (ORS) from health care facilities and/or professionals. The Data Oversight Council will rely, to the extent possible, on data elements currently being reported among health care entities.

B. The DOC shall establish the Data Release Protocol and make final decisions concerning the release of these data. The *Principles and Protocol for the Release of Health Care Data's* process for identifying data



elements to be reported will include means for review and input by interested parties taking into consideration all applicable federal and state laws and regulations.

C. The DOC shall determine reports and electronic formats of data to be released for public use.

D. The DOC shall review and approve procedures for the ORS to use in protecting the confidentiality of the patient, health care facility, health care professional, and health insurers, excluding Medicare, Medicaid and any other governmental health insurers.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.

### **19-1120. Classification of Data Elements.**

A. The data elements are classified into four categories: encounter-level, restricted, confidential, and never releasable. These categories are defined as:

(1) Encounter-level data are those data elements that are available for general public use.

(2) Restricted data are those data elements that require approval for release through the Data Release Protocol.

(3) Confidential data elements are those that shall be released only if a mandate has been established by statutory law.

(4) Never releasable data elements are those that may be used for statistical linking purposes only.

B. Until data elements are classified, they shall be considered restricted data and shall be subject to the Data Release Protocol.

C. To insure the confidentiality of patients, health care facilities, health care insurer and/or health care professionals certain data elements shall be classified by these regulations as Restricted, Confidential, or Never Releasable data elements. Restricted data elements include, but are not limited to, health care facility identifiers, health care professional identifiers, health care insurer identifiers, patient medical record number or chart number, and unique patient number. Confidential data elements include, but are not limited to, patient name and address (excluding all Mental Health and Alcohol and other Drug Abuse encounters). Never releasable data elements include, but are not limited to, patient social security number (for all encounters), patient name and address for all Mental Health and Alcohol and other Drug Abuse encounters as required by federal law, and any other patient identifying information protected from release by federal law. All identifiers may be released back to the entity providing the data or controlling the enumeration of the data.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.

### **19-1130. Data Release Protocol.**

A. The confidentiality of the patient shall be of the utmost concern. The release or re-release of data, in raw or aggregate form, that can be reasonably expected to reveal the identity of an individual patient shall be made only when a mandate has been established by statutory law.

B. Requests for the release of encounter-level and/or restricted data elements for research purposes shall be subject to the Data Oversight Council's Data Release Protocol.

C. The release of encounter-level, restricted and/or confidential data elements require that a confidentiality contract be signed by the appropriate individuals as specified in the *Principles and Protocol for the Release of Health Care Data* for each classification of data.

(1) These Confidentiality Contracts shall protect the confidentiality of the patient, health care facility, health care provider and health insurer and shall be specified in the *Principles and Protocol for the Release of Health Care Data* by the Data Oversight Council.

(2) These data are the property of the ORS and must be surrendered upon direction of the DOC.

(3) Failure to comply with the Confidentiality Contract may result in legal action. A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

D. The DOC shall review requests for the release of encounter-level, restricted and/or confidential data for non-research purposes and make a final determination about the release of data.

E. Reports to be released for public use must follow the procedures and formats published in *The Principles and Protocol for the Release of Health Care Data: The Principles and Protocol for the Release of Health Care Data* shall allow for review and input by affected parties on the reports to be released for public use, taking into consideration all applicable federal, state laws and regulations.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.

## ARTICLE 12 THE SOUTH CAROLINA TUITION PREPAYMENT PROGRAM REGULATIONS

(Statutory Authority: SC Code § 59-4-30(B))

### **19-1200. Definitions.**

For the purpose of Article 12, the following definitions should be used:

1. Average Tuition - the per semester cost calculated by summing the tuition charged to each in-state resident student at a public, four-year college or university in South Carolina and dividing that sum total by the total number of in-state resident students attending a public, four-year college or university in South Carolina.
2. Board - the State Budget and Control Board.
3. College or University - a state-chartered public educational institution of higher learning located in South Carolina.
4. Contributor - a person who makes or is obligated to make advance payments in accordance with a tuition prepayment contract; or, in the event of multiple individual contributors, the primary party responsible for contract obligations.
5. Designated Beneficiary - the individual who is designated as the beneficiary of amounts paid or to be paid to the Tuition Prepayment Program or, in the case of a change in beneficiaries as permitted under Title 59, Chapter 4 of the South Carolina Code of Laws, 1976, the individual who is the new beneficiary.
6. Director - the head of the South Carolina Tuition Prepayment Program.
7. Disabled - the designated beneficiary is unable to benefit from higher education as a result of sickness, disease, mental incapacity or injury contracted or incurred after the date of the tuition prepayment contract.
8. Fund - the South Carolina Tuition Prepayment Program Fund.
9. Independent Institution of Higher Learning - any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Secondary Schools.
10. Member of the Family - any individual defined by such term as 26 U.S.C. sec. 529(e)(2) or any successor provision.
11. Payment(s) - payment(s) required to be made under the payment schedule that are received by the Fund and credited to the designated beneficiary's account.
12. Payment Schedule - the document furnished by the Program to the contributor upon enrollment of the designated beneficiary in the Program, and describing the due dates and amounts of payments required of the contributor under the selected payment plan.
13. Program - the South Carolina Tuition Prepayment Program.
14. Projected Enrollment Date - the semester specified in the tuition prepayment contract as the first semester in which a designated beneficiary may use the tuition benefits of a tuition prepayment contract. The projected enrollment date is based on the designated beneficiary's age and/or educational grade level at the time of application to the Program.

15. Tuition - the credit hour charges imposed for full time enrollment by a public higher education institution in this State and all mandatory fees required as a condition of full time enrollment of all students.

16. Tuition Prepayment Contract - the contract entered into by the Director of the South Carolina Tuition Prepayment Program or his designee on behalf of the Program and a contributor pursuant to this chapter for the advance payment by the contributor of in-state tuition at a fixed, guaranteed level for a designated beneficiary to attend for up to four years on a full-time basis a public educational institution of higher learning in South Carolina or to another educational institution of higher learning that may be provided for at Title 59, Chapter 4 of the South Carolina Code of Laws, 1976, and to which the designated beneficiary is admitted, enrolled, and classified as a degree-seeking undergraduate student.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1205. Program Organization.**

A. Scope and Purpose: This regulation sets forth the guidelines for the general daily operations of the Program.

B. Agency Organization:

1. The Program is created as a program within the Board.

2. The Program staff is composed of the following persons:

(a) The director who must be appointed and supervised by the Executive Director of the Board. The director must be a state official or employee upon assuming the position.

(b) Other support staff as determined by the director.

C. Statutory Provision: The primary statutory provisions affecting the operation of the Program are located at Title 59, Chapter 4 of the South Carolina Code of Laws, 1976, and any additional provisions enacted by the Legislature addressing the Program.

D. Public Information and Inspection of Records: The public records of the Program are generally available for public inspection pursuant to the "Freedom of Information Act". Persons wishing to inspect public records may ordinarily do so during normal business hours subject to the scheduling of Program staff to assist. Appointments for public inspection of records should be made to ensure staff availability.

E. Program Parameters:

1. The Program is authorized to enter into all necessary contracts for services, supplies, goods, space, and equipment including the authority to hire temporary consultants, employees, actuaries, managers, legal counsel, auditors, marketing services, and other professional and technical expertise.

2. The Fund must be invested and managed as directed by the Board.

3. The Program may accept gifts, grants, and other financial assistance from any source.

4. The Program shall establish the procedures by which a contributor may purchase a tuition prepayment contract on behalf of a designated beneficiary entitling the designated beneficiary to the waiver, payment, or partial payment of certain qualified higher educational expenses.

5. The Program shall establish and implement application procedures, prepare and distribute necessary forms and documents, and prepare and distribute Program annual reports.

6. The Program shall establish other policies, procedures, and criteria to implement and administer the provisions of the enabling Act.

7. The Program shall establish eligibility requirements for designated beneficiaries including, but not limited to, a requirement of residency in this State.

8. The Program shall provide adequate safeguards to prevent a contributor from making contributions to an account on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary.

9. The Program shall prepare reports required by state and Federal law.

F. Confidentiality of Information: Information that identifies the contributors or designated beneficiaries of a tuition prepayment contract and their advance payment account activities is

confidential and must not be disclosed without the consent of the designated beneficiary, in accordance with a judicial order, or to those persons with an official need to access the information.

G. Limited Liability to the State: Any act or undertaking of the Program shall not constitute a debt of the State or any agency, department, institution, or political subdivision, or a pledge of the full faith and credit of the State or any agency, department, institution, or political subdivision, but is payable solely from the Fund.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19–1210. Eligible Institutions of Higher Learning.**

A. Scope and Purpose: This regulation establishes the institutions of higher learning in South Carolina at which a designated beneficiary may apply the benefits of a tuition prepayment contract and any other similar institutions of higher learning as may be recognized by the Board.

B. Colleges and Universities:

1. Tuition prepayment contract benefits may be used for the payment of a designated beneficiary's in-state tuition for up to four years, not to exceed eight semesters, or the equivalent, of undergraduate study to the following colleges or universities and any other similar institutions as may be recognized by the Board in accordance with the meaning of "colleges or university" as defined in section 19–1200.3 of these Tuition Prepayment Program Regulations:

- (a) The Citadel, Charleston
- (b) Clemson University, Clemson
- (c) Coastal Carolina University, Conway
- (d) College of Charleston, Charleston
- (e) Francis Marion University, Florence
- (f) Lander University, Greenwood
- (g) Medical University of South Carolina, Charleston
- (h) South Carolina State University, Orangeburg
- (i) University of South Carolina, Columbia
- (j) University of South Carolina, Aiken
- (k) University of South Carolina, Spartanburg
- (l) Winthrop University, Rock Hill

2. Tuition prepayment contract benefits may be used for the payment of a designated beneficiary's in-state tuition for undergraduate study for up to two years, not to exceed four semesters or the equivalent, of the benefits provided by the tuition prepayment contract to the following state-chartered, public two-year regional campuses of a senior institution in South Carolina and any other similar institutions as may be recognized by the Board:

- (a) University of South Carolina, Beaufort
- (b) University of South Carolina, Lancaster
- (c) University of South Carolina, Salkehatchie
- (d) University of South Carolina, Sumter
- (e) University of South Carolina, Union

3. A tuition prepayment contract guarantees the payment of a designated beneficiary's in-state tuition for undergraduate study for up to two years, not to exceed four semesters or the equivalent, of the benefits provided by the tuition prepayment contract to the following state-chartered, public technical colleges in South Carolina and any other similar institutions as may be recognized by the Board:

- (a) Aiken Technical College, Aiken
- (b) Central Carolina Technical College, Sumter
- (c) Chesterfield-Marlboro Tech, Cheraw
- (d) Denmark Technical College, Denmark

- (e) Florence-Darlington Tech, Florence
- (f) Greenville Technical College, Greenville
- (g) Horry-Georgetown Tech, Conway
- (h) Midlands Technical College, Columbia
- (i) Orangeburg-Calhoun Tech, Orangeburg
- (j) Piedmont Technical College, Greenwood
- (k) Spartanburg Technical College, Spartanburg
- (l) Technical College of the Lowcountry, Beaufort
- (m) Tri-County Technical College, Pendleton
- (n) Trident Technical College, Charleston
- (o) Williamsburg Technical College, Kingstree
- (p) York Technical College, Rock Hill

4. A tuition prepayment contract guarantees payment of a designated beneficiary's tuition, up to an amount equal to the average tuition charged by colleges and universities (as delineated in Section 19-1210B(1)) at the time of matriculation, for up to four years, not to exceed eight semesters, or the equivalent, of undergraduate study to the following private independent institutions of higher learning in South Carolina, which are accredited by the Southern Association of Colleges and Secondary Schools, and any other similar institutions as may be recognized by the Board:

- (a) Allen University, Columbia
- (b) Anderson College, Anderson
- (c) Benedict College, Columbia
- (d) Charleston Southern University, Charleston
- (e) Claflin College, Orangeburg
- (f) Coker College, Hartsville
- (g) Columbia International University, Columbia
- (h) Columbia College, Columbia
- (i) Converse College, Spartanburg
- (j) Erskine College, Due West
- (k) Furman University, Greenville
- (l) Limestone College, Gaffney
- (m) Lutheran Theological Seminary, Columbia
- (n) Morris College, Sumter
- (o) Newberry College, Newberry
- (p) North Greenville College, Tigerville
- (q) Presbyterian College, Clinton
- (r) Sherman College of Straight Chiropractic, Spartanburg
- (s) Southern Wesleyan College, Central
- (t) Voorhees College, Denmark
- (u) Wofford College, Spartanburg

5. A tuition prepayment contract guarantees payment of a designated beneficiary's tuition, up to an amount equal to the average tuition charged by colleges and universities (as delineated in Section 19-1210B(1)) at the time of matriculation, for undergraduate study to the following private, two-year institution in South Carolina, which is accredited by the Southern Association of Colleges and Secondary Schools, and any other similar institutions as may be recognized by the Board:

- (a) Spartanburg Methodist College, Spartanburg

6. A tuition prepayment contract guarantees payment of a designated beneficiary's tuition, up to an amount equal to the average tuition charged by colleges and universities (as delineated in Section 19-1210B(1)) at the time of matriculation less an administrative fee to be determined annually by the Board, for up to four years of undergraduate study, or the equivalent as determined in Section 19-1255C.1, to an accredited institution of higher learning outside of South Carolina at which the designated beneficiary applies and is accepted.

**HISTORY:** Added by State Register Volume 22, Issue 6, Part 1, eff June 26, 1998.

### **19-1215. Duties of the Board.**

A. Scope and Purpose: The Board shall perform those duties and responsibilities prescribed in the "South Carolina Tuition Prepayment Program Act".

B. The Board is responsible for developing and adopting the guidelines and strategies for the Program fund.

C. The Board is responsible for developing and adopting the investment policies for the Program fund. The Board may establish any necessary mechanisms to seek advice relative to the development, adoption, and management of investment policies for the Program fund.

D. The Board is responsible for developing and adopting the costs, termination, and withdrawal options of the tuition prepayment contracts.

E. The Board is responsible for directing the investments of the Fund. The Fund shall be expended only for the purposes of Title 59, Chapter 4 of the South Carolina Code of Laws, 1976.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1220. Duties of the Director.**

A. Scope and Purpose: This regulation sets forth the policies and procedures related to the duties of the director in administering the Program.

B. The director shall have the tuition prepayment contracts prepared in accordance with the provisions of Title 59, Chapter 4 of the South Carolina Code of Laws, 1976, and with the direction of the Board.

C. The director or his designee shall prepare an annual financial report of the fund and the program. This report must be submitted to the Board on the date required by the Board and in the format prescribed by the Board.

D. The Program and the Fund shall be subject to audit by the State Auditor or his designee. The director shall provide reports on audit activities and findings to the Board at the request of the Board and in a format prescribed by the Board.

E. The director or his designee annually shall evaluate the actuarial soundness of the fund and report this information to the Board.

F. Solicitation of Rulings:

1. The director shall solicit answers to applicable ruling requests from the Internal Revenue Service regarding the tax status of fees paid pursuant to a tuition prepayment contract to the contributor and to the designated beneficiary. The director shall make the status of these requests known to the Board.

2. The director shall solicit answers to applicable ruling requests from the Securities and Exchange Commission regarding the application of federal securities laws to the program. The director shall make the status of these requests known to the Board.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1225. The Fund.**

A. Scope and Purpose: This regulation sets forth the policies and procedures governing the administration of the Fund.

B. Fund Composition:

1. The Fund is created as a nonpublic special, revolving fund and established and maintained by the State of South Carolina.

2. The Fund shall consist of monies received from contributors, state appropriations, other monies acquired from governmental and private sources, and earnings from the investments of the Fund.

C. Rules for Usage of the Fund:

1. The Fund shall be expended only for the purposes of Title 59, Chapter 4 of the South Carolina Code of Laws, 1976.

2. Interest in the Fund or any portion of the Fund shall not be used as security for a loan. An attempt to use the Fund, a tuition prepayment contract, or a portion of either as security for a loan is void.

3. The earnings from Fund investments become a part of the Fund and shall be expended only for the purposes of Title 59, Chapter 4 of the South Carolina Code of Laws, 1976.

D. Management of the Fund:

1. The Fund shall be invested as directed by the Board.

2. The Board is responsible for the investment policies of the Fund which may be invested in any manner authorized by law.

3. The custody and management of the Fund shall be directed by the Board, which may develop any mechanism it sees fit to seek advisement relative to the investment of the assets of the Fund.

4. Separate accountings shall be maintained for each designated beneficiary.

5. A contributor or designated beneficiary may not direct the investment of contributions to the Program or earnings on the Program.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19–1230. Tuition Prepayment Contract Application and Payment.**

A. Scope and Purpose: This regulation sets forth the policies and procedures for the purchase and payment of tuition prepayment contracts.

B. Contract Requirements:

1. The director may enter into tuition prepayment contracts with contributors who may be an individual or individuals, a corporation, partnership, association, trust, nonprofit organization, any legally recognized organization that has the authority to enter into contracts, or other entities approved by the Board. The contributor, if an individual or individuals, must be eighteen (18) years of age or older, or must be represented by a court appointed conservator or guardian, or a trustee, or a designated custodian under the provisions of Title 20, Chapter 7, Sections 140 through 240, Code of Laws of South Carolina, 1976, as may be amended.

2. A contributor must designate, on the application, the social security number, the age and, if applicable, the educational grade level of the designated beneficiary. For children under the age of one (1), the social security number must be provided to the Program within a reasonable period of time following the date the application is submitted. The contributor must also indicate on the application the payment plan that will be purchased under the tuition prepayment contract.

3. Only one (1) corporation, partnership, association, trust, nonprofit organization, or other entity may be named on the application and in the tuition prepayment contract as the contributor. Joint contributors where the named contributors are individuals may be permitted. In the event of joint individual contributors, one individual must be named as the primary party responsible for contract obligations.

4. Only one (1) designated beneficiary is allowed per tuition prepayment contract.

5. A single individual may be named as the designated beneficiary in up to two (2) tuition prepayment contracts provided that both of the tuition prepayment contracts naming the same designated beneficiary are for the two year benefit option plan. Under no circumstances may a single individual be named as a designated beneficiary on more than one tuition prepayment contract when one of the contracts purchased on behalf of the designated beneficiary provides for the full four years of contract benefits. In the event tuition prepayment contracts are processed with combined benefits extending beyond four years for the same designated beneficiary, the tuition

prepayment contract processed first shall be deemed valid and the remaining tuition prepayment contract(s) shall be deemed canceled.

6. The contributor does not have to specify at the time of application the institution of higher learning that the designated beneficiary will attend.

7. The projected enrollment date specified on the application shall correspond to the age and/or grade of the designated beneficiary at the time of application.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1235. Application Process.**

A. The annual application period shall commence and terminate on the dates prescribed by the Board. The dates of the application period will be publicly advertised. The application period shall be determined by the Board annually and be set for a duration period of at least ninety (90) days.

B. Applications may be obtained from the Program Office.

C. An application will be considered incomplete and will not be accepted unless it is accompanied by the Application Processing Fee described in Section 19-1290B.1(a).

D. An application must contain all of the information that the Board determines is necessary for proper administration of the Program enrollment process.

E. After acceptance by the Program of the contributor's application, a payment schedule and master agreement shall be mailed to the contributor. The tuition prepayment contract documents shall be comprised of the contributor's application, master agreement, and the payment schedule.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1240. Payment Schedule.**

A. The Board at least annually shall evaluate the payment schedule and revise that schedule as appropriate for the future.

B. Tuition prepayment contract prices shall be evaluated based on, among other factors as deemed appropriate by the Board, the average tuition at four-year colleges and universities; the type of payment plan selected by the contributor at the time of application; and the age and/or educational grade level of the designated beneficiary at the time of application.

C. All tuition prepayment contract prices shall be publicized.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1242. Payment Options.**

A. A contributor may choose to make payments under one (1) of three (3) different payment plans as follows:

1. A lump sum payment due in full on or before the date designated by the Board and published in the payment schedule;

2. Monthly payments over a period of forty-eight (48) continuous months. The payments shall begin on the date specified in the payment schedule and will continue on a monthly basis thereafter until the tuition prepayment contract is fully paid. The final payment must be received by the Program not later than July 1 of the year immediately preceding the projected college enrollment date of the designated beneficiary; or

3. Continuous monthly payments beginning on the date prescribed in the tuition prepayment contract and continuing on a monthly basis until not later than July 1 of the year immediately preceding the projected enrollment date of the designated beneficiary.

B. A tuition prepayment contract may only name a designated beneficiary who is under 21 on the first day of the month in which the application period begins, who has not completed the 10th or any higher grade and is not within two (2) years of his or her projected enrollment date, on the first day of the Program application period during which the tuition prepayment contract is purchased.

C. Calculations for monthly payments shall include, among other things, an implied rate of interest and a monthly Account Maintenance Fee.



D. The amount of each monthly payment for contributors choosing one of the monthly payment options shall be specified in the tuition prepayment contract.

E. The specific due date of the final payment for contributors choosing one of the monthly payment options will be specified in the tuition prepayment contract.

F. Tuition prepayment contract payments are due in full on the dates specified in the tuition prepayment contract.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19–1245. Remittance of Payments.**

A. All payments to the Program must be made in cash only.

B. A contributor may select from various payment methods as authorized by the director. A contributor may make a written request for a change in payment method. The request is subject to review and approval by the director whose decision shall be final.

C. Automatic payroll deduction is provided for State of South Carolina employees. Any other employer desiring to establish automatic payroll deduction for tuition prepayment contract contributors may do so as long as the payroll deduction is administered in accordance with specifications provided by the Board.

D. Payments shall be due upon the prescribed payment due date regardless of whether the process for making the payment has been implemented.

E. A contributor will be responsible for making all payments on time, prior to implementation of payroll deduction or automatic deduction from a checking or savings account.

F. Any contributor whose payment is delayed beyond the payment due date shall be assessed late payment fees as described in Section 19–1290.

G. A contributor may request a change in payment method at any time during the application period in which the contributor enters the Program and extending through the tenth (10<sup>th</sup>) day of the month in which the first payment is due for monthly contributors, or in which the one time, lump sum payment is due for lump sum contract contributors. A change to the payment schedule at any other time, including at the time of a designated beneficiary substitution, must be approved by the director and may require the contributor to cancel the existing tuition prepayment contract and to purchase a new tuition prepayment contract during a subsequent application period.

H. A contributor who has selected a monthly payment plan may pay off the plan early. In such cases, the contributor can obtain a payoff amount by contacting the Program office.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19–1250. Default.**

Failure to make any payment within thirty (30) days of the due date shall constitute default by the contributor and a cancellation of the contributor's and the designated beneficiary's rights and benefits under the tuition prepayment contract. Within 180 days of the tuition prepayment contract default, a contributor may reinstate the tuition prepayment contract provided that all delinquent amounts, including an actuarial assessment, and all administrative fees, including late payment fees, have been paid. If within 180 days of default, payment of all monies required to reinstate the tuition prepayment contract are not received, the tuition prepayment contract will be canceled. Refund provisions are provided in Section 19–1295.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19–1255. Tuition Prepayment Contract Benefits.**

A. Scope and Purpose: This regulation sets forth the benefits available to qualified beneficiaries of a tuition prepayment contract.

B. The tuition prepayment contract is entered into between the director, on behalf of the Program, and the contributor. The tuition prepayment contract shall consist of the completed application, the master agreement, and the payment schedule. Additional documents relating to the tuition prepayment contract, issued or received by the Board, on behalf of the Program, and pursuant to the various

terms and conditions described at Title 59, Chapter 4 of the South Carolina Code of Laws, 1976, will be incorporated into the tuition prepayment contract as appropriate.

C. Contract type:

1. A tuition prepayment contract provides, unless otherwise stated therein, payment by the Fund of in-state tuition, on behalf of the designated beneficiary of the tuition prepayment contract, to the college or university in which the designated beneficiary matriculates. A tuition prepayment contract for the four-year plan will provide payment of in-state tuition for not more than four years, or the equivalent. A tuition prepayment contract for the two-year plan will provide payment of in-state tuition for not more than two years, or the equivalent. In no event will the total payout by the Program exceed the cost for a full time, in-state resident student to attend eight semesters at a college or university.

2. Tuition benefits for a designated beneficiary may begin for the semester of the projected enrollment date.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

**19-1260. Contract Exclusions.**

A. The tuition prepayment contract will not provide for benefits associated with graduate programs. Fund payments may only be applied toward the attainment of an undergraduate degree.

B. The tuition prepayment contract will not provide for benefits payable for adult basic, adult secondary, or Postsecondary adult vocational learning programs. Fund payments may only be applied toward the attainment of an undergraduate degree.

C. The Fund shall make no payments toward expenses related to dormitory or other housing programs.

D. The Fund shall make no payments toward the expenses of books or non-mandatory fees.

E. In the event that a designated beneficiary does not meet the residency requirements for in-state tuition and fees at the time of matriculation at a college or university, the designated beneficiary shall be responsible for the difference in tuition and fees imposed by the college or university and the benefits provided by the tuition prepayment contract.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

**19-1265. Contract Contributors.**

A. Any individual or individuals meeting the requirements for an individual contract contributor under section 19-1230B.1, a corporation, partnership, association, trust, nonprofit organization, any legally recognized organization that has the authority to enter into contracts, or other entities approved by the Board may purchase a tuition prepayment contract for a designated beneficiary. Only the contributor may execute tuition prepayment contract changes, conversions, transfers, termination, and refund requests.

B. Any requests to change the contributor designated on a tuition prepayment contract must be signed and notarized by both the original contributor and the new contributor.

C. Refunds shall be made payable to the order of the contributor, or the primary contributor in the case of multiple individual contributors for one tuition prepayment contract, only.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

**19-1270. Beneficiary Eligibility.**

A. For each annual application period, a designated beneficiary is defined as an individual who is under the age of 21 on the first day of the month in which the application period begins, has not completed the 10th grade, and is a resident of South Carolina.

B. The designated beneficiary of the tuition prepayment contract must be a South Carolina resident for at least twelve (12) months prior to a contributor's application for a tuition prepayment contract. This requirement does not apply in the case of a child born in South Carolina and under the age of one (1) on the date of application.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1272. Beneficiary Substitution.**

A. A contributor may request a change in a tuition prepayment contract to substitute an eligible designated beneficiary who a member of the family of the designated beneficiary. The substitute designated beneficiary must meet all requirements, including but not limited to the residency requirement, of a designated beneficiary at the time of substitution.

B. Documentation must be submitted with the designated beneficiary transfer request evidencing the relationship of the transferee. The contributor will be required to sign and notarize any request to substitute designated beneficiaries on a tuition prepayment contract. The substitution must be made prior to the designated beneficiary matriculating at a public college or university.

C. The change to a substitute designated beneficiary is limited to individuals who are the same age as or younger than the designated beneficiary.

D. When any request for change in the designated beneficiary is made, the Program may assess an additional amount to ensure the actuarial soundness of the Fund.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1275. Contract Termination.**

A. Tuition prepayment contract termination shall be voluntary on the part of the contributor.

B. Termination shall occur within thirty (30) days of the Program receiving written notice of a contributor's desire to cancel a tuition prepayment contract. The written notice must be signed by the contributor and notarized.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1278. Contract Cancellation.**

A. Tuition prepayment contract cancellation shall be an action by the director.

B. Cancellation will occur under the following circumstances:

1. A determination of fraud or any misrepresentation on the part of the contributor to include, but not be limited to, misrepresentation of the residency of a designated beneficiary at the time of application;

2. The nonpayment of any required payments due within the established time frames;

3. The designated beneficiary reached his or her thirtieth (30<sup>th</sup>) birthday prior to exhausting the benefits of the tuition prepayment contract; or

4. Any other event including, but not limited to, a determination of fiscal or actuarial soundness of the Fund, as may be determined by the director.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1280. Transfer Provisions.**

A. In the event the designated beneficiary matriculates in an independent institution of higher learning in South Carolina, the appropriate benefits as defined in Section 19-1210B.4 of the tuition prepayment contract will be forwarded to the institution. For purposes of the Program, the per semester benefits shall be the average tuition charged by the colleges and universities at the time of matriculation.

B. A designated beneficiary may transfer the benefits of a tuition prepayment contract to an eligible out-of-state college or university. For purposes of the tuition plans, the per semester benefits shall be average tuition charged by the colleges and universities at the time of matriculation, less an administration fee to be determined by the Board.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

### **19-1285. Limitations.**

A. The master agreement shall provide that a tuition prepayment contract which has not been terminated or the benefits exhausted by the time the designated beneficiary reaches his thirtieth (30<sup>th</sup>) birthday is canceled; however, up to forty-eight (48) continuous months expended by a designated beneficiary as an active duty member of any branch of the armed services of the State of South

Carolina or the United States may be added to the time specified pursuant to the terms of the tuition prepayment contract.

B. Nothing in this chapter must be construed as a promise or guarantee that a designated beneficiary may be admitted to a college or university or other independent institution of higher learning, allowed to continue enrollment at a public college or university or other independent institution of higher learning after admission, or graduated from a public college or university or other independent institution of higher learning.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19–1290. Administrative Fees.**

A. Scope and Purpose: This regulation sets forth the guidelines for establishing administrative and programmatic fees to offset the costs of administering the Program.

B. Fee Schedule:

1. The following fees will be set annually by the Board and will apply for all tuition prepayment contract applicants and contributors:

(a) Application Fee. A nonrefundable application fee will be collected at the time the application is submitted.

(b) Termination Fee. A fee will be collected upon termination of any tuition prepayment contract purchased, except when a contributor requests a waiver as a result of the following two (2) cases:

(1) The contributor or the designated beneficiary dies or becomes disabled; or

(2) The designated beneficiary receives a scholarship which renders the tuition prepayment contract unusable.

(c) Cancellation Fee. In the event the contract has been canceled by the director, a cancellation fee will be assessed.

(d) Out-of-State School Transfer Fee. An administrative fee will be assessed for the transfer of benefits to an eligible postsecondary school outside of South Carolina.

(e) Account Maintenance Fee. An administrative fee will be included in monthly payment amounts for all contract payments that have not been made in full.

(f) Other Administrative Fees. Additional charges may be assessed under the direction and annual review of the Board. These administrative charges may include, but are not limited to, fees for substitution of a designated beneficiary, late payment, non-sufficient funds, change in payment plan option, account maintenance, change of contributor, document replacement, and early enrollment.

C. All outstanding fees must be paid by July 1 of the year of the projected enrollment date in order for the designated beneficiary to receive tuition prepayment contract benefits.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19–1295. Refunds.**

A. Scope and Purpose: This regulation sets forth the policies and procedures for providing refund of payments to contributors.

B. Except as provided herein, refunds shall not exceed the amount paid for any plan bought by the contributor. Termination of student status after the official drop/add period eliminates the refund option for that semester.

C. Refund amounts shall not include amounts paid by the contributor over the duration of the tuition prepayment contract for administrative or programmatic fees.

D. All refund requests must be in writing, signed by the contributor and notarized.

E. In Case of Scholarship:

1. If a designated beneficiary is awarded a scholarship, the terms of which cover the benefits included in the tuition prepayment contract, monies paid for the purchase of the tuition prepayment contract shall be returned on a pro rata basis to the contributor in semester installments coinciding

with the matriculation by the designated beneficiary in amounts equal to the lesser of the original purchase price plus the compounded rate of return earned by the Fund or the current average tuition at colleges and universities (as delineated in Section 19-1210B(1)).

2. Proof of scholarship by the institution granting the scholarship shall be provided to the director by the contributor in such form as specified by the Program.

F. In the Event of Death or Disability:

1. In the event of death or disability of the designated beneficiary, monies paid for the purchase of a tuition prepayment contract shall be returned to the contributor in lump sum to include the lesser of the total of contract contributions plus the compounded rate of return earned by the Fund or the current average tuition at colleges and universities (as delineated in Section 19-1210B(1)).

2. Proof of death or disability shall be provided to the director by the contributor in such form as required by the Program.

G. Refund Requests for Other than Tuition:

1. If a designated beneficiary does not use the tuition prepayment contract benefits for tuition the contract will be terminated and the contributor will have available a pro-rata refund of the amount paid into the Fund and such earnings as the Program may deem appropriate. A refund under this rule will not include funds for any school year partially attended but not completed. A school year partially attended but not completed shall mean any one semester of a two semester school year whereby the student is enrolled at the conclusion of the official drop/add period, but withdraws before the end of such semester. A more than de minimus penalty, to be determined by the Program and under the direction of any Federal legislation addressing the Program, will be assessed against the amount available for refund to the contributor.

2. Any contributor who exhausts the benefits purchased under a tuition prepayment contract and for whom the total value of benefits received under such contract is less than the total of principal paid for the benefits may request from the Program a refund of the difference between the value of the benefits received and the principal paid.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**

### **19-1298. Unclaimed Refunds.**

A. In the event that a contributor fails to request a refund, after three years the refund will be paid to the Fund.

B. The Board shall annually review and approve the transfer of unclaimed refunds and inadvertent payments, when such refunds and inadvertent payments have remained unclaimed for seven years, from the accounts in which they are held to the Fund.

**HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.**