

STANDARDS MANUAL

FOR DRAFTING AND FILING REGULATIONS

Amended 2011
DEIRDRE BREVARD-SMITH, EDITOR
SOUTH CAROLINA STATE REGISTER

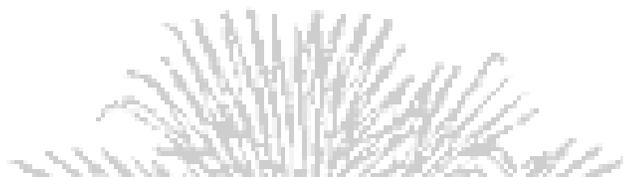


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I. INTRODUCTION

This *Standards Manual for Drafting and Filing Regulations* is a revision of the 2006 version. It contains guidelines and standards for drafting and filing regulations for General Assembly review and for submitting documents for publication in the *State Register*.

II. SOUTH CAROLINA STATE REGISTER

The *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *Code of State Regulations*. The *State Register* is a monthly publication containing Governors' executive orders, agency notices of general public interest, agency notices of drafting regulations, and proposed, final, and emergency regulations filed pursuant to the South Carolina Administrative Procedures Act (APA), Section 1-23-10 et seq., S.C. Code of Laws, 1976.

A. DOCUMENTS PUBLISHED IN THE STATE REGISTER

1. **Governor's Executive Orders** are orders issued by the Governor considered to be of interest to the public.
2. **Notices of General Public Interest** are considered by a state agency to be of interest to the general public. Errata notices are included in this category.
3. **Notices of Drafting Regulations** notify the public that a state agency will be drafting regulations on a particular topic thereby providing the public the opportunity to comment on the agency's proposal for regulations during the agency's initial drafting period before publication of the proposed regulation.
4. **Proposed Regulations** contain the text of regulations that a state agency has proposed and include information providing the opportunity for public comment and hearing.
5. **Final Regulations** are regulations adopted by state agencies and approved by the General Assembly by enactment of a joint resolution or by the one-hundred-twenty day automatic approval process or adopted by the agency to comply with federal law and submitted as final to the Legislative Council. Final regulations are effective upon publication in the *State Register*.
6. **Emergency Regulations** are regulations filed by a state agency with the Legislative Council when the agency finds that an imminent peril to public health, safety, or welfare or an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation. If a natural resources-related agency finds that an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation to protect or manage natural resources, the agency may file the regulation with a statement of the situation that requires immediate promulgation. An emergency regulation is effective upon filing for ninety days and is renewable for an additional ninety days if the original filing begins and ends during the legislative interim.

B. PUBLICATION SCHEDULE AND FILING DEADLINES

The *State Register* is published on the **fourth** Friday of each month. Additional issues of the *State Register* may be published as considered necessary by the Legislative Council. Documents to be published in the *State Register* must be received in the office of the *State Register* by 5:00 PM on the **second** Friday of each month in order to be included in that month's issue. Agencies are encouraged to submit documents for publication as early as possible prior to the deadline date so that there will be sufficient time to process, review, and verify documents before the deadline. **Documents that are not in complete compliance with this manual will be returned to the agency. Returned documents must be refiled by the deadline in order to be included in that month's publication.**

C. SUBSCRIPTIONS

Electronic subscriptions to the *State Register* are free to state agencies. Subscription forms are available on the South Carolina General Assembly Home Page, www.scstatehouse.gov, under Publications, South Carolina State Register Subscription Form.

III. AGENCY PROMULGATION OF REGULATIONS

To adopt, amend, or repeal a regulation, a state agency must prepare and submit all documents required by the Administrative Procedures Act (APA) to be published in the *State Register* according to the standards prescribed in this manual and the requirements of the APA. Although these standards are designed to incorporate the requirements for promulgation of regulations pursuant to the APA, an agency must not rely exclusively on this manual for regulatory process requirements and must also consult the APA for further specificity of these requirements. Compliance with these standards and requirements are the exclusive means by which administrative regulations become effective in South Carolina.

Questions of a general nature regarding the promulgation and review process for regulations may be directed to the Office of the Legislative Council; however, pursuant to the Administrative Procedures Act the Attorney General is responsible for interpretation of the Act and determining agency compliance. (Section 1-23-70)

A. DEFINITIONS

1. **Regulation.** A regulation as defined in the Administrative Procedures Act is “...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term “regulation” includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include:

- a. Descriptions of agency procedures applicable only to agency personnel;
- b. Opinions of the Attorney General;
- c. Decisions or orders in rate making, price fixing, or licensing matters;
- d. Awards of money to individuals;
- e. Policy statements or rules of local school boards;
- f. Regulations of the National Guard;
- g. Decisions, orders, or rules of the Board of Probation, Parole and Pardon Services;
- h. Orders of the supervisory or administrative agency of a penal, mental, or medical institution in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients;
- i. Decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment, tenure, and promotion of faculty, and disciplinary proceedings;
- j. Decisions of the Human Affairs Commission relating to firms or individuals;
- k. Advisory opinions of agencies;
- l. Other agency actions relating only to specified individuals.”

Determining if an agency procedure or policy must be promulgated as a “regulation” is often crucial to an agency because whether or not this procedure or policy has the force and effect of law hinges on whether it was required to be promulgated as a regulation and if so, if it was promulgated in compliance with the requirements of the Administrative Procedures Act.

2. **Administrative Procedures Act or APA.** This act provides the statutory requirements for the promulgation, processing, and review of regulations. The act is codified at Article 1, Chapter 23, Title 1; Section 1-23-10 et seq., S.C. Code of Laws, 1976.

3. **Assessment Report.** A report prepared by the Budget and Control Board if the regulation has a substantial economic impact and if the promulgating agency received a request for a report from two members of the General Assembly during the drafting comment period or by majority vote of a legislative committee reviewing the regulation during the legislative review process. (Section 1-23-115) (SEE APPENDIX 4).

4. **Fiscal Impact Statement.** A preliminary or final statement prepared by a state agency that reflects estimates of costs to be incurred by the State and its political subdivisions in complying with the regulation. (Section 1-23-110(A)(3)(e)) (SEE APPENDIX 2).

5. **Instructions.** Instructions are precise directions to the publishers of the *Code of State Regulations* for placement of the regulations in the *Code*. For example:

Instructions: New regulation added.

Instructions: Delete items (a), (b), (c), and (d). Items (e) and (f) remain.

Instructions: Amend item (c). Items (a) and (b) remain the same.

6. **Preamble.** An introductory narrative describing the purpose, scope, and content of the proposed regulation; it must include all of the major subjects (topics) addressed in the regulation and a section-by-section discussion and justification for any provision not required to maintain compliance with federal law. The preamble also must include a reference to the date the Notice of Drafting was published in the *State Register*.

7. **Presiding Official's Report.** A written report prepared by the presiding official of a public hearing that may be required to be conducted pursuant to Section 1-23-111. The report must include findings as to the need and reasonableness of the regulation and may include suggested modifications in the case of a finding by the presiding official of a lack of need or reasonableness.

8. **Regulation Number and Analysis Line.** The regulation number is assigned by the agency in accordance with its placement in the agency's chapter in the *Code of State Regulations*. The analysis line is provided by the agency and describes the subject of the regulation.

9. **Statement of Need and Reasonableness.** A statement prepared by a state agency as to the need and reasonableness of a regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (3) and (9) through (11). A Statement of Need and Reasonableness is required for all proposed regulations (SEE APPENDIX 3).

10. **Statement of Rationale.** A detailed statement prepared by a state agency stating the basis for the regulation, including the scientific or technical basis, if any, and identifying any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.

11. **Statutory Authority.** The statutory authority cites the code section in the Code of Laws of South Carolina, 1976, that gives the state agency the authority for promulgating regulations, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation.

12. **Substantial Economic Impact.** A substantial economic impact states the financial impact, if any, on commercial enterprises, retail businesses, service businesses, industry, consumers of a product or service, taxpayers, or small businesses. (Section 1-23-10(7))

13. **Synopsis.** A summary prepared by the agency of the content of the regulation and changes to existing regulations. The synopsis should include all of the major issues addressed in the regulation, including any citations of federal law that mandate changes in the regulation. The synopsis is included in a joint resolution introduced to approve or disapprove the regulation.

14. **Text.** The full text of the new or amended regulation as it would appear in the *Code of State Regulations* and the text of a regulation that is being repealed.

B. STEPS IN PROMULGATING PERMANENT REGULATIONS

STEP 1

PUBLICATION OF A NOTICE OF DRAFTING

The publication of a Notice of Drafting in the *State Register* is the first step in the regulatory process for promulgation of a permanent regulation. The Notice of Drafting must include a synopsis of what the agency plans to draft or repeal, the agency's statutory authority for promulgating the regulation, and the address where interested persons may submit written comments during the drafting period. (Section 1-23-110(A)(1))

STEP 2

PUBLICATION OF THE PROPOSED REGULATION WITH A NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT

Following the drafting period the agency submits its proposed regulation, and Legislative Council assigns a document number to the proposed regulation upon filing. The regulation is referenced by this number throughout the legislative review process. A proposed regulation must include the:

1. Statutory Authority. (Section 1-23-110(A)(3)(d));
2. Narrative Preamble, including a section-by-section discussion of the proposed regulation. (Section 1-23-110 (A)(3)(c));
3. Preliminary Fiscal Impact Statement prepared by the agency, containing estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. (Section 1-23-110(3)(e)) (SEE APPENDIX 2);
4. Notice of Opportunity for Public Comment, including a notice of public hearing. (Section 1-23-110(A)(3)) (SEE STEP 3, "PUBLIC HEARING ON A PROPOSED REGULATION");
5. Statement of Need and Reasonableness. (Section 1-23-110 (A)(3)(g)) (SEE APPENDIX 3);
6. Statement of Rationale. (Section 1-23-110(A)(3)(h));
7. Full text of the proposed regulation. (Deleted text must be stricken through and new text must be underlined) (Section 1-23-120(B)(2));
8. Completed Document Transmittal Form (SEE APPENDIX 1); and
9. If an assessment report was requested by two members of the General Assembly during the drafting comment period, a summary of the preliminary assessment report and notice that copies of the preliminary report are available from the agency. (Section 1-23-110 (A)(3)(f)) (SEE APPENDIX 4).

NOTE: If requests for an assessment report have been made for a regulation that does not have a substantial economic impact, a statement must be filed with the regulation to that effect. If requests for an assessment report have been made on a regulation that is exempt from filing an assessment report, an explanation of the exemption must be filed with the regulation.

STEP 3

PUBLIC HEARING ON A PROPOSED REGULATION

Because public access is one of the goals of the Administrative Procedures Act, a notice of opportunity for a public hearing must be included as part of the proposed regulation. The public hearing must be held at least thirty days after publication of the notice of the hearing in the *State Register* if requested by twenty-five or more persons, by an individual representing a group of twenty-five or more persons, by a governmental subdivision or agency, or by an association having at least twenty-five members. The notice of public hearing must include the address to which written comments must be sent, the time period of not less than thirty days for submitting these comments, and the date, time, and place of the public hearing.

When a public hearing is held that involves the promulgation of a regulation by a department for which the governing authority is a single director, the hearing must be conducted by an administrative law judge assigned by the chief judge. When a hearing is held that involves the promulgation of a regulation by a department for which the governing authority is a board or commission, the hearing must be conducted by the board or commission with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the Statement of Need and Reasonableness, and any written exhibits in support of the proposed regulation. The agency may also submit oral evidence. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official must issue a written report which must include findings as to the need and reasonableness of the proposed regulation and may include suggested modifications to the proposed regulation in the case of a finding of lack of need or reasonableness.

If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

1. Incorporate the suggested modifications of the presiding official into the proposed regulation and submit the revised proposed regulation for legislative review;
2. Not modify the proposed regulation and submit the proposed regulation as originally drafted for legislative review with a copy of the presiding official's report attached; or
3. Terminate the promulgation process by publication of a notice in the *State Register*.

STEP 4

REGULATIONS REQUIRING GENERAL ASSEMBLY REVIEW

After a state agency, pursuant to Section 1-23-110, has adopted a regulation, which may include a new regulation or an amendment to or repeal of an existing regulation, the agency shall submit the regulation to the General Assembly for review, and it must be submitted for review within one year of the date of publication of the Notice of Drafting. (Section 1-23-120(A). An agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of the regulation as proposed pursuant to Section 1-23-110(A)(3) and the substantive change was not raised, considered, or discussed by public comment received by the agency. The agency shall refile such a regulation for publication in the *State Register* as a proposed regulation pursuant to Section 1-23-110(A)(3).

Regulations and all correspondence pertaining to regulations must be submitted to the General Assembly through the Editor of the *State Register* in the Legislative Council. The Editor shall process and forward the regulations to the President of the Senate and the Speaker of the House of Representatives.

To initiate the process of legislative review, the agency shall file with the Editor of the State Register:

1. Two letters of request for review: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives;
2. The full text of the regulation. Deleted text must be stricken through and new text underlined. The regulation must be accompanied by:
 - a. A synopsis of the regulation that explains the content of the regulation and any changes to existing regulations;
 - b. Instructions to publishers on the regulation's placement in the *Code of State Regulations* or amendments to existing regulations;
 - c. A fiscal impact statement;
 - d. Statement of Rationale;
 - e. If an assessment report was requested by two members of the General Assembly, summary of the final assessment report and the final assessment report prepared by the Division of Research and Statistics or a statement or explanation that an assessment report is not required or is exempt;
 - f. If directed by the Small Business regulatory Review Committee:
 - (i) economic impact statement;
 - (ii) regulatory flexibility analysis.
3. A report of the presiding official of the public hearing, if required pursuant to Section 1-23-111(C)(b).

STEP 5

REGULATIONS EXEMPT FROM GENERAL ASSEMBLY REVIEW

General Assembly review is not required for regulations that are:

1. Promulgated to comply with federal law;
2. Promulgated by the State Board of Financial Institutions to authorize state-chartered banks, savings and loan associations, and credit unions to engage in activities that are authorized pursuant to Section 34-1-110, S.C. Code of Laws, 1976;
3. Promulgated by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;
4. Emergency Regulations filed pursuant to Section 1-23-130.

However, Steps 1 through 3 must be completed for a regulation exempt from General Assembly review and the documents enumerated in Step 4, number 2 and 3 above, must also be filed with the Editor of the State Register, except that strike through and underlined text, a fiscal impact statement, and a statement of rationale are not required. The regulation must be submitted by the agency as final for publication in the *State Register*, and unless specified otherwise, the regulation is effective upon the date of publication.

If underlying federal law is the basis for exemption and the federal law is repealed or otherwise does not have the force and effect of law, the state regulation is deemed repealed. The state agency must publish this repeal in the *State Register* within sixty days of the date the federal law lost its force and effect, and the prior state regulation, if any, is reinstated. (Section 1-23-120(H)(1)).

C. EMERGENCY REGULATIONS

An emergency regulation may be filed by an agency which finds that imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in the Administrative Procedures Act. Also, if a natural resources-related agency finds that an abnormal or an unusual condition, immediate need, or the State's best interest requires immediate promulgation of an emergency regulation to protect or manage natural resources, the agency may file the regulation with a statement of the situation that requires immediate promulgation. An emergency regulation must be prepared according to the standards prescribed in this manual and filed with the Editor of the *State Register* in the office of the Legislative Council for publication in the *State Register*.

An emergency regulation is effective upon filing for ninety days and is renewable for an additional ninety days if the original filing begins and ends during the legislative interim. An emergency regulation that has a substantial economic impact may not be refiled without a summary of the final assessment report prepared by the Division of Research and Statistics, if an assessment report was requested by two members of the General Assembly during the first ninety day period the regulation was in effect, and a statement of need and reasonableness prepared by the agency also must be submitted.

IV. LEGISLATIVE REVIEW OF REGULATIONS

A. ONE-HUNDRED-TWENTY-DAY REVIEW PERIOD

Upon receiving a regulation, the President of the Senate and the Speaker of the House, respectively, refer the regulation to the standing committee of the Senate and House which is most concerned with the function of the promulgating agency. The General Assembly has one hundred twenty calendar days to review a regulation from the date the regulation is received by the President of the Senate and Speaker of the House of Representatives. If no action occurs in the committee on a regulation within sixty calendar days of the committee receiving the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting. *Sine die* adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly, excluding special sessions called by the Governor.

B. METHODS OF APPROVAL AND DISAPPROVAL OF REGULATIONS

A regulation may be approved or disapproved by the enactment of a joint resolution, generally introduced by the committee to which the regulation was referred but it may be introduced by any member. A regulation also may be automatically approved by expiration of the one-hundred-twenty-day review period.

Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled until a negative vote is taken on the joint resolution. An emergency regulation may not be filed on regulations for which the standing committee has introduced a joint resolution disapproving the regulation. If no joint resolution is enacted to approve the regulation or introduced to disapprove the regulation before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

C. MODIFICATION, WITHDRAWAL, AND RESUBMISSION OF REGULATIONS

A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version.

The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, the committee may introduce a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

Additionally, if a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing, along with its recommendations of what would be necessary to obtain committee approval. The agency may:

1. Withdraw the regulation from the General Assembly and resubmit it with the recommended changes. If a regulation is not resubmitted within thirty days, the regulation is considered permanently withdrawn;
2. Withdraw the regulation permanently;
3. Take no action and abide by whatever action is taken, or not taken, by the General Assembly on the regulation concerned.

The date of the standing committee's letter (the "notification") tolls the one-hundred-twenty-day period for automatic approval.

When an agency withdraws a regulation from the General Assembly upon the request of a committee or on its own, the remainder of the period begins to run only on the date the regulation is resubmitted to the General Assembly.

Upon resubmission of the regulation, if fewer than twenty days remain in the legislative review period, additional days must be added to equal twenty days.

If an agency decides to take no action when requested by a committee to withdraw a regulation and make changes, the agency shall notify the committee in writing with a copy to the Editor of the *State Register*, and the remainder of the legislative review period will resume as of the date of the notification. (Section 1-23-125)

TO WITHDRAW A REGULATION at the request of a committee or on its own, the agency shall file with the Editor of the *State Register* two letters of request for withdrawal: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives.

TO RESUBMIT A REGULATION, the agency shall file with the Editor of the *State Register*:

1. Two letters of request to resubmit: one addressed to the President of the Senate and one addressed to the Speaker of the House of Representatives that state the reason for withdrawal and resubmission and state the changes contained in the version of the regulation to be resubmitted;
2. The revised regulation, including a revised synopsis, instructions, and fiscal impact statement.

A regulation is deemed withdrawn if it has not become effective by the date of publication of the next *State Register* published after the end of the two-year legislative session in which the regulation was submitted to the President and Speaker for review. Other provisions of the Administrative Procedures Act notwithstanding, a regulation deemed withdrawn pursuant to the end of the two-year legislative session may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, if the resubmitted regulation contains no substantive changes from the previously submitted version.

D. EFFECTIVE DATES OF REGULATIONS

A final regulation takes effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation. The final regulation is published in the next issue following approval based on deadline dates for publication. A regulation approved before the second Friday of the month is published in that month's *State Register*. A regulation approved after the second Friday of the month is published in the following month's *State Register*.

An emergency regulation takes effect upon filing with the Editor of the *State Register* and remains in effect for ninety days. It is renewable for ninety additional days if the original ninety-day period begins and ends during the legislative interim.

E. CORRECTING ERRORS IN REGULATIONS

An error in the text of a proposed or adopted regulation printed in the *State Register* may be corrected by an agency requesting the Editor of the *State Register* to publish an errata notice in the *State Register* if the correction does not change the legal meaning of the regulation.

F. STATUTORY FIVE-YEAR REVIEW OF REGULATIONS

Pursuant to Section 1-23-120 (J) and Section 1-23-270(F), by July 1, 1997 and every five years thereafter, each state agency that promulgates regulations or to which the responsibility for administering regulations has been transferred shall conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except regulations exempt from General Assembly review and emergency regulations promulgated pursuant to Section 1-23-130. Upon completion of the review, the agency shall submit to the Code Commissioner, at Legislative Council, a report that identifies those regulations:

1. which the agency intends to begin the process of repeal;
2. which the agency intends to begin the process of amendment; and
3. which do not require repeal or amendment.

V. SPECIAL REPORTS

A. ASSESSMENT REPORTS

During the drafting comment period for a regulation a request may be made by two members of the General Assembly for an assessment report to be prepared on a regulation having a substantial economic impact. The agency must submit a preliminary assessment report to the Budget and Control Board, Division of Research and Statistics before the date the notice of the public hearing is published in the *State Register* with the proposed regulations. The preliminary assessment report must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of economic activities arising from the proposed regulation. (Section 1-23-115) (SEE APPENDIX 4).

The Division of Research and Statistics shall prepare and publish a final assessment report within sixty days after the date of the public hearing held pursuant to Section 1-23-110(A)(3). The Division shall forward the final assessment report and a summary of the final report to the promulgating agency. Both the preliminary and final reports may include:

1. A description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
2. A determination of the need for the regulation and the expected benefit of the regulation;
3. A determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
4. The effect of the regulation on competition;
5. The effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;
6. The effect of the regulation on employment in the geographical area in which the regulation would be implemented;
7. The source of revenue to be used for implementing and enforcing the regulation;
8. A conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;
9. The uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation must consider qualitative and quantitative benefits and burdens;
10. The effect of the regulation on the environment and public health;
11. The detrimental effect on the environment and public health if the regulation is not implemented.

The legislative committee to which a regulation has been referred also may, by majority vote, notify the promulgating agency in writing informing the agency that the committee cannot approve the regulation unless an assessment report is prepared and provided to the committee. The notification must be copied to the Editor of the *State Register* and the one-hundred-twenty-day legislative review period is tolled on the date of the notification.

Following receipt of the committee's request, the agency shall send a preliminary assessment report to the Budget and Control Board, Office of Research and Statistics with a request for a final assessment report and a copy of the committee's written request. The Office of Research and Statistics will prepare and submit a final assessment report to the agency. The agency shall submit the final assessment report and a summary of the report to the Editor of the *State Register*. The review period resumes when the assessment report is submitted to the committees by the Editor. If fewer than twenty days remain in the legislative review period, additional days will be added to equal twenty days.

An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. In preparing an assessment report, numerically precise cost-benefit analysis is not required. At no time is an agency required to include items (4) through (8) in a preliminary assessment report; however, these items may be included in the final assessment report prepared by the Division of Research and Statistics.

Assessment reports may not be requested on:

1. Regulations specifically exempt from General Assembly review pursuant to Section 1-23-120(H). However, if any portion of a regulation promulgated to maintain compliance with federal law, and thereby exempt from review, is more stringent than federal law, then that portion is not exempt from an assessment report;
2. Emergency regulations, except that an emergency regulation that has a substantial economic impact may not be refiled without a summary of the final assessment report prepared by the Division of Research and Statistics if an assessment report was requested by two members of the General Assembly during the first ninety day period the regulation was in effect.
3. Regulations which control the hunting or taking of wildlife, including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

B. SMALL BUSINESS REGULATORY FLEXIBILITY REPORTS

Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare in accordance with Section 1-23-270 et seq.:

1. an economic impact statement that includes the following:
 - a. an identification and estimate of the number of small businesses subject to the proposed regulation;
 - b. the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;
 - c. a statement of the economic impact on small businesses; and
 - d. a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;
2. a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

If directed by the Small Business Regulatory Review committee to prepare these reports, the agency shall submit these reports along with its regulations to the General Assembly for review.

VI. PREPARING DOCUMENTS FOR FILING AND PUBLICATION

A. DEVELOPMENT OF STANDARDS

The Legislative Council has developed the standards contained in this manual for drafting and filing documents and submitting regulations. All regulations must be filed electronically in accordance with this manual so that all regulations can be preserved in a searchable database from which they can be efficiently and effectively retrieved by the user and printed in the *State Register* and in the *Code of State Regulations*. These standards are designed to incorporate the requirements for promulgation of regulations pursuant to the Administrative Procedures Act; however, an agency must not rely exclusively on this manual for regulatory process requirements and must also consult the Administrative Procedures Act for these requirements.

B. SUBMISSION OF DOCUMENTS

1. All documents printed in the *State Register* or sent to the General Assembly for review must be submitted in two forms, electronic and paper. Documents must be submitted electronically via email to reg@scstatehouse.gov. **The official filing date and time for emailed documents will be the date and time the paper copy is received in the Legislative Council.**

2. **Documents that must be submitted in electronic and paper forms:**

- a. Notices of General Public Interest and Notices of Drafting for publication in the *State Register* – electronic and two paper copies.
- b. Proposed regulations - electronic and two paper copies.
- c. Final regulations submitted for publication in the *State Register* that are exempt from General Assembly review - electronic and two paper copies.
- d. Regulations being submitted for General Assembly review - electronic and two paper copies.
- e. Emergency regulations - electronic and two paper copies.

3. **Documents that must be submitted in paper copy only:**

- a. Letters to the Speaker of the House of Representatives and Lieutenant Governor that request General Assembly review - an original and one copy of each letter.
- b. Document Transmittal Forms - an original and one copy.
- c. Supporting material such as graphs, maps, illustrations, and charts (such material should be originals or good quality) - two copies.

4. **Documents that must be submitted upon request or pursuant to the APA:**

- a. A report from the presiding official of the public hearing - two copies.
- b. Letters from members of the General Assembly requesting an assessment report - two copies.
- c. Final assessment report prepared by the Division of Research and Statistics - two copies.
- d. Economic Impact Statement and Regulatory Flexibility Analysis - two copies.

C. CODIFICATION

The purpose of codification is to make it possible to cite the subject matter of every section, subsection, and item of a regulation with precision. For example:

DO NOT
7-70. Licenses. There are three kinds of licenses: A. Restricted; B. Unrestricted; C. Temporary. These licenses are issued only in the months of July and January.

DO
7-70. Licenses. A. There are three kinds of licenses: (1) Restricted; (2) Unrestricted; (3) Temporary. B. These licenses are issued only in the months of July and January.

In the “Do Not” example, the last paragraph stands alone, it is not codified; it cannot be cited. In the “Do” example, every subject is codified and every subject can be cited. The citation of the last paragraph is R. 7-70 (B).

An example of correctly codified text follows:

61-96. Athletic Trainers
A. In order that athletic trainers practicing in the State may be certified, they must meet the following requirements of examination and registration fees unless otherwise exempted by law.
B. The Examination: The examination shall be the current examination of the National Athletic Trainers' Association.
(1) Application Fee: The application fee shall be \$50.00 due on the day of the examination.
(2) Other fees:
(a) Duplicate certificate: \$5.00.
(b) Duplicate ID Card: \$2.00.

A typical citation under the codification system in the above example is R.61.96B(2)(a). This citation refers to “Duplicate certificate: \$5.00”.

The numbering system for codified text follows this format:

- 61- Agency chapter number in the *Code of State Regulations*
- 61-96 The number of the regulation assigned by the agency
- 61-96A Section
- 61-96A(1) Subsection
- 61-96A(1)(a) Item

A typical citation illustrating codification is 61-96 B(2)(a) as shown below:

- 61- The number assigned to the agency issuing the regulation. It corresponds to a chapter number in the *Code of State Regulations* (in this case the chapter number for the Department of Health and Environmental Control).
- 96 The number of the regulation assigned by the agency.
- A The section designation of the regulation: (A) - (Z) and (AA) - (ZZ). There can never be only one section; there must be at least two. If there is only one section in a regulation, do not designate the section. It would be referred to as the number assigned by the agency.
- (1) The subsection designation of the regulation. Each section may be subdivided into several subsections indicated in the citation by an Arabic numeral in parenthesis. There can never be only one subsection; there must be at least two. If there is only one subsection in a regulation, do not designate the subsection.
- (a) Dividing a subsection further creates an item, designated by a lower case letter in parenthesis. Items cannot be written singly; there must always be at least two. Dividing a regulation into several subsections and items is not advisable unless absolutely necessary for clarity. If it is necessary, the divisions would be “number, letter, number, letter,” with each division having at least two entries.

D. WORD PROCESSING STANDARDS

Documents that do not comply with the word processing standards enumerated below will be returned to the agency. A returned document must be refiled before the publication deadline in order to be included in that month's publication.

1. Type text single spaced.
2. Set justification to full.
3. Set all margins (top, bottom, left and right) to one inch.
4. Use only one font throughout the document. Times New Roman, Scalable 11 point, is preferred. If the font must be decreased for drafting very complex tables within the text of the regulation, return to an 11 point font at the end of the table or chart.
5. If possible use the following tab settings: 0.15, 0.3, 0.45, 0.6, 0.75, 0.9, 1.05, 1.2, 1.35, 1.5, 1.65, 1.8, 1.95, 2.1, 2.25, 2.4, 2.55, 2.7, 2.85, 3.0, 3.15, 3.3, 3.45, 3.6, 3.75, 3.9. The text of regulations is written as a series of tabbed paragraphs. The first line of the paragraph is indented one tab; all other lines return to the left margin. A section is indented two tabs; a subsection, three tabs and so on. The indentation pattern is:

A. Eligibility Requirements.

1. All applications shall include the following information for the area to be serviced under the terms of the grant:

- a. A description of the solid waste management project or public education recycling project for which grant funds are requested, including any business and accounting plans for such projects;

NOT:

A. Eligibility Requirements.

1. All applications shall include the following information for the area to be serviced under the terms of the grant:
 - a. A description of the solid waste management project or public education recycling project for which grant funds are requested, including any business and accounting plans for such projects;
6. USE hard returns only at the end of a paragraph or to create space between paragraphs. DO NOT USE a hard return at the end of each line; allow the sentence to "wrap around" automatically. Paragraph spacing should be set to 0 pt for both before and after settings.
7. If you have text that needs to be in table or column format, make sure to return the tab settings to those referenced in Item 5 above at the end of your table or column. Do not use spaces to separate columns or align text.
8. DO NOT USE headers or footers.
9. DO NOT USE bold print in the text of a document except where bold print is necessary for specified headings and subheadings in *State Register* documents.
10. USE italics and underscoring sparingly.

11. When referring to code sections in the Code of Laws of South Carolina, 1976, write out the word “Section”.
12. Use decimal tabs when tabbing numbers with decimals such as dollar amounts. DO NOT USE tabs and spaces to line up decimals.
13. DO NOT use Word’s automatic paragraph and outline numbering. USE tabs to space over when outlining. This method helps to maintain a neat outline throughout the text of the *State Register* publication.
Example: (Tab) A. (Tab) Waste material must not be
14. DO NOT use “styles”. The style setting should be “normal” throughout the document.
15. When revising regulations by deleting existing text and replacing it with new text, strike the existing text first, then place the new text (underlined) after the stricken text.
16. Paginate the document. (bottom, center)
17. If you need help with GRAPHICS, TEXTBOXES, TABLES OR COLUMNS, please call Legislative Printing, Information and Technology Systems at 212-4420 for specific instructions.

E. PROCESSING OF SUBMITTED DOCUMENTS

The Legislative Council has 10 working days to convert and process a regulation that is submitted for publication or for General Assembly review. The document will be returned to the agency for a signature of verification and will not be published if it does not meet the publication schedule or will not be forwarded for legislative review until the verified regulation is returned to the Editor of the *State Register*. The promulgating agency is responsible for proofing and verifying the document to make sure that it is accurate and contains the text the agency intended to submit.

VII. GUIDELINES FOR DRAFTING TEXT

A. LANGUAGE STYLE

Write in plain, easy to understand English. Avoid the use of jargon, “bureaucratese”, and “legalese”. If a technical word must be included, define it the first time it is used if it is not defined in a definitional section. Avoid synonyms; use a specific word for an item and use it throughout the regulation. Use the third-person singular in regulations. Use active voice verbs. Use “shall or must” and “will and may” correctly, making sure that the meaning of each use is clear. Refer to South Carolina as “the State”, but refer to other states by their names (i.e. West Virginia, not “the State of West Virginia”). Write out all numbers, such as “one hundred twenty days”. Delete unnecessary words, but do not substitute brevity for clarity or accuracy.

B. CITATIONS

Citing another regulation within the text of a regulation should follow the form: R. 61-96 (for example); citing a section, R. 61-96A; citing a subsection, R. 61-96A(1); citing an item, R. 61-96A(1)(a). To refer to a section, subsection, or item of a regulation within the text of the same regulation, use “the section as in A above”, “the subsection as in A(1) above”, and “the item as in A(1)(a) above”.

References to notices or other matters published in the *State Register* are cited as SR22-1”. “SR” refers to the *State Register*; “22” is the volume number for a particular year; “1” is the issue number of the volume designating the month in which it is published.

C. INCORPORATION BY REFERENCE

Because some regulations are lengthy and are available in printed form elsewhere, a provision has been made to incorporate them into regulations by reference. Examples of such material are federal rules that a state agency adopts, a uniform code such as the National Fire Code, and forms, handbooks, or manuals used routinely in agencies. A regulation may be incorporated by reference only if the incorporated material is retained at the agency and made available upon request to a member of the public.

A. EXAMPLE OF NOTICES OF GENERAL PUBLIC INTEREST

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. National Fire Protection Association 14, Standard for the Installation of Standpipe and Hose Systems, 2010 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Code of Laws, Section 40-10-240(A)
South Carolina Regulations 71-8300.2(G)(4)

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

ERRATA

61-79. Hazardous Waste Management Regulations

The amendment of R.61-79.270 published in the *State Register*, Volume 14, Issue No. 12 (November 23, 1990), is corrected so that amended sections R.61-79.270.40 through 270.49 on pages 254 through 258 are deleted. These sections have not been amended; the previous text of R.61-79.40 through 270.49 remains in effect.

B. EXAMPLE OF NOTICE OF DRAFTING REGULATION

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Section 44-56-410, et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to draft a new regulation that addresses the Drycleaning Restoration Fund. Interested persons may submit comments to Mr. John Brown, Bureau of Solid and Hazardous Waste, Division of Site Assessment and Engineering, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on June 25, 1996, the close of the drafting comment period.

Synopsis:

The General Assembly passed the "Drycleaning Restoration Fund Act" (Section 44-56-410) that established a State administered program for the rehabilitation and remediation of sites contaminated by drycleaning solvents. The fund is to be capitalized through the imposition of fees and charges levied on all drycleaners in the State using perchloroethylene and stoddard solvents and wholesale suppliers of perchloroethylene and stoddard solvents except that drycleaners who solely use stoddard solvents or a combination of perchloroethylene and stoddard solvents may opt out of the program. The Act requires the Department of Revenue and the Department of Health and Environmental Control to jointly administer the program. Both agencies must promulgate regulations to provide for the optimum use of these funds.

The proposed regulation will address remediation of sites contaminated by drycleaning solvents. Criteria, procedures, and standards will be provided for eligibility assessment, moratorium, financial responsibility, facility prioritization, restoration investigation and goals, and contractor certification.

Legislative review of this proposal will be required.

C. FORMAT OF A PROPOSED REGULATION

Document No. _____

[Upon filing, a document number is assigned to the proposed regulation. The regulation is referenced by this number throughout the legislative process until the regulation is published as final in the State Register.]

NAME OF AGENCY

[Name of Agency: centered, all caps; bold print]

CHAPTER 00

[Agency chapter number: centered, all caps]

Statutory Authority: 1976 Code Section 00-000-0000

[Statutory Authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate regulations, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number. Do not use the legal section symbol (§); write out the word "Section."]

00-000. *[Insert the number and title of the regulation. If the title of an existing regulation is to be amended, show the change in title in the revised text below.]*

[Skip 1 line]

Preamble: *[Bold print subheading]*

[The preamble is an introductory narrative describing the purpose, scope, and content of the proposed regulation; it contains precise language and covers all of the major subjects (topics) addressed and includes a section-by-section discussion and justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs. The preamble must also include a reference to the date the Notice of Drafting was published in the State Register.]

[Skip 1 line]

Notice of Public Hearing and Opportunity for Public Comment: *[Bold print subheading]*

[This notice must include: (1) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments, and (2) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date this notice is published in the State Register.]

[Skip 1 line]

Preliminary Fiscal Impact Statement: *[Bold print subheading]*

[Skip 1 line]

Statement of Need and Reasonableness: *[Bold print subheading]*

DESCRIPTION OF REGULATION: *[Title of regulation]*

Purpose:

Legal Authority:

Plan for Implementation:

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

[Narrative]

DETERMINATION OF COSTS AND BENEFITS:

[Narrative]

UNCERTAINTIES OF ESTIMATES:

[Narrative]

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

[Narrative]

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

[Narrative]

[Skip 1 line]

Statement of Rationale: *[Use bold print for subheading. A detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.]*

[Skip 1 line]

Summary of Preliminary Assessment Report: *[Add this section to the Proposed Regulation only if an Assessment Report was requested by two members of the General Assembly during the drafting comment period. If this section is added, bold print the subheading]*

[Skip 1 line]

Text: *[Bold print subheading]*

[Complete text of proposed new regulation or amendment to existing regulation as it should appear in the Code of State Regulations or the text of a regulation being repealed]

D. FORMAT OF A REGULATION SUBMITTED FOR GENERAL ASSEMBLY REVIEW

Document No. 0000

[Insert the document number assigned to the regulation at the time it was proposed in the State Register.]

NAME OF AGENCY

[Name of agency: centered, all caps, bold print]

CHAPTER 00

[Agency chapter number: centered, all caps]

Statutory Authority: 1976 Code Section 00-000-0000

[Statutory authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate the regulation, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number. Do not use the legal section symbol (§); write out the word "Section."]

00-000. *[Insert the number and title of the regulation]*

[Skip 1 line]

Synopsis: *[Bold print subheading. The synopsis should explain the content and any changes in existing regulations resulting from the regulations.]*

[Skip 1 line]

Instructions: *[Bold print subheading. Give exact directions to the publishers for placement of the regulation in the Code of State Regulations.]*

[Skip 1 line]

Text: *[Bold print subheading. Complete text of the new regulation or amendment to or repeal of an existing regulation as it should appear in the Code of State Regulations.]*

[Skip 1 line]

Fiscal Impact Statement: *[Use bold print for subheading. This is a final agency statement reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the new regulation.]*

[Skip 1 line]

Statement of Rationale: *[Use bold print for subheading. A detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation.]*

[Skip 1 line]

Final Assessment Report Summary Prepared by the Office of Research and Statistics of the S.C. Budget and Control Board: *[Add this subsection to the Final Regulation only if an Assessment Report was requested by two members of the General Assembly during the drafting comment period. Bold print subheading.]*

E. FORMAT FOR AN EMERGENCY REGULATION

NAME OF AGENCY

[Name of agency: centered, all caps, bold print]

CHAPTER 00

[Agency chapter number: centered, all caps]

Statutory Authority: 1976 Code Section 00-000-0000

[Statutory authority is the code section in the Code of Laws of South Carolina, 1976, that gives an agency the authority to promulgate the regulation, as well as the authority that gives regulating power to the agency, and any additional legislative enactment that requires or permits the agency to regulate the specific activity addressed in the regulation. It is centered immediately after the chapter number; do not use the legal section symbol (§), write out the word "Section."]

00-000. *[Insert the number and title of the regulation]*

Emergency Situation:

[Statement of the situation requiring immediate promulgation]

Text:

[Full text of emergency regulation]

Statement of Need and Reasonableness: *[Include this section only when refiling for an additional ninety-day period if the regulation has a substantial economic impact.]*

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

DESCRIPTION OF REGULATION:

Purpose:

Legal Authority:

Plan for Implementation:

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

DETERMINATION OF COSTS AND BENEFITS:

UNCERTAINTIES OF ESTIMATES:

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

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

Final Assessment Report Summary Prepared by the Office of Research and Statistics of the S.C. Budget and Control Board. *[Include this section when refiling, only if an assessment report was requested by at least two members of the General Assembly during the first ninety days the regulation was in effect pursuant to Section 1-23-130(B)]*

APPENDIX 1

DOCUMENT TRANSMITTAL FORM

This form must be completed and submitted with each document filed with the Editor of the *State Register* in the Legislative Council

1. Agency Name	2. Chapter Number	3. Date of Filing
4. Regulation Number	5. Subject of Regulation	
6. Statutory Authority		

7. Type of Filing

- _____ NOTICE OF GENERAL PUBLIC INTEREST
- _____ NOTICE OF DRAFTING
- _____ PROPOSED REGULATION
- _____ EMERGENCY REGULATION
- _____ FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW
- _____ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW
- _____ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW WITH NO SUBSTANTIVE CHANGES
- _____ FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

8. For Additional Information, Contact	9. Telephone Number	
10. Typed Name of Official	11. Signature of Official	12. Date

SOUTH CAROLINA STATE REGISTER USE ONLY	
13. For publication in SR Volume ____ Issue ____ Document Number _____ Verification: _____	OFFICIAL FILING STAMP

APPENDIX 2

PRELIMINARY OR FINAL FISCAL IMPACT STATEMENT

The Preliminary or Final Fiscal Impact Statement shall reflect costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A political subdivision includes counties, municipalities, school districts, and special purpose districts.

A preliminary fiscal impact statement is required for regulations subject to legislative review but is not required for regulations exempt from General Assembly review pursuant to Section 1-23-120(H).

A preliminary fiscal impact statement is required for the proposed regulation (Section 1-23-110(A)(3)(e)), and a final fiscal impact statement is required to be submitted with the regulation for General Assembly review pursuant to (Section 1-23-120(B)(6)).

A suggested format for the preliminary fiscal impact statement is shown below.

Preliminary or Final Fiscal Impact Statement:

The (Name of Agency) estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be approximately \$_____.

APPENDIX 3

STATEMENT OF NEED AND REASONABLENESS

Code Sections 1-23-110 and 1-23-111 and 1-23-115, if applicable, require an agency promulgating a regulation to provide a Statement of Need and Reasonableness to evaluate the effect and impact of the proposed regulation, the consequences of no action, and possible alternatives to the proposed action. The Statement of Need and Reasonableness is required for all proposed regulations and the amendment to or repeal of existing regulations.

The Statement of Need and Reasonableness is determined by the agency based on an analysis enumerated in Section 1-23-115(C) (1) - (3) and (9) - (11) listed below:

1. A description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
2. A determination of the need and reasonableness of the regulation and the expected benefit of the regulation;
3. A determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
9. The uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation must consider qualitative and quantitative benefits and burdens;
10. The effect of the regulation on the environment and public health; and
11. The detrimental effect on the environment and public health if the regulation is not implemented.

Although an agency is not required to include an analysis of the factors in Section 1-23-115(C)(4) - (8) in its Statement of Need and Reasonableness, comments received by the agency during the public comment periods related to these items must be made part of the official record of the proposed regulation.

An assessment report, if required, must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. Numerically precise cost-benefit analysis is not required in preparing an assessment report.

(FORMAT NEXT PAGE)

Suggested Format: Statement of Need and Reasonableness

1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11)

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: *[Title of Regulation]*

Purpose of Regulation:

Legal Authority:

Plan for Implementation:

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

[Narrative]

DETERMINATION OF COSTS AND BENEFITS:

[Narrative on costs and benefits, including estimates of economic impacts, costs for implementation, cost effectiveness, efficiency, and feasibility]

UNCERTAINTIES OF ESTIMATES OF BENEFITS AND BURDENS:

[Narrative]

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

[Narrative]

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

[Narrative]

APPENDIX 4

PRELIMINARY ASSESSMENT REPORT

Pursuant to Section 1-23-115(A), an assessment report may be requested on a regulation by at least two members of the General Assembly during the drafting comment period or by majority vote of a legislative committee to which the regulation was referred for review. A request for an assessment report may be made on a regulation having a substantial economic impact except:

1. Regulations specifically exempt from General Assembly review pursuant to Section 1-23-120(H). However, if any portion of a regulation promulgated to maintain compliance with federal law, and thereby exempt from review, is more stringent than federal law, then that portion is not exempt.
2. Emergency regulations filed in accordance with Section 1-23-130; however, an assessment report may be requested on emergency regulations refiled for an additional ninety day period.
3. Regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

Content Requirements for the Assessment Report

An assessment report must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and the State and the effects of the economic activities arising out of the proposed regulation and may address the factors set forth in Section 1-23-115(C)(1) through (11).

Although the agency is not required to include in its preliminary assessment report Section 1-23-115(C)(4) through (8), which include the effects of the regulation on competition, on the cost of living and doing business in the affected areas, and on employment in the affected areas and which include the source of funds for implementation and enforcement of the regulation and a conclusion of the short-term and long-term economic impact upon all persons substantially affected, these factors may be addressed in the final report.

Responsibility of the Promulgating Agency to Update the Preliminary Assessment Report

If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency shall submit corrected information to the Office of Research and Statistics, Budget and Control Board with a copy to the Editor of the *State Register*. The Office of Research and Statistics shall forward a revised Final Assessment Report to the agency. The agency shall submit the revised report to the Editor of the *State Register* who shall submit the revised report to the committees to which the regulation was referred.

(SUGGESTED FORMAT NEXT PAGE)

Suggested Format: Preliminary Assessment Report

PRELIMINARY ASSESSMENT REPORT
PREPARED IN ACCORDANCE
WITH S.C. CODE SECTION 1-23-115

FOR PROPOSED REGULATION _____

(Date)

DESCRIPTION OF REGULATION: *[Title of regulation]*

Purpose of Regulation:

Legal Authority:

Plan for Implementation:

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

[Narrative]

DETERMINATION OF COSTS AND BENEFITS:

[Narrative]

UNCERTAINTIES OF ESTIMATES OF BENEFITS AND BURDENS:

[Narrative]

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

[Narrative]

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

[Narrative]

TITLE 1

Administration of the Government

CHAPTER 23

State Agency Rule Making and Adjudication of Contested Cases

Article 1

State Register and Code of Regulations

SECTION 1-23-10. Definitions.

As used in this article:

(1) "Agency" or "State agency" means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;

(2) "Document" means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;

(3) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

(4) "Regulation" means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term "regulation" includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney

General; decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.

(5) "Promulgation" means final agency action to enact a regulation after compliance with procedures prescribed in this article.

(6) "Division" means the Division of Research and Statistical Services in the State Budget and Control Board.

(7) "Substantial economic impact" means a financial impact upon:

(a) commercial enterprises;

- (b) retail businesses;
- (c) service businesses;
- (d) industry;
- (e) consumers of a product or service;
- (f) taxpayers; or
- (g) small businesses as defined in Section 1-23-270.

SECTION 1-23-20. Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.

The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council; provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

SECTION 1-23-30. Filing of documents with Legislative Council; public inspection; distribution.

The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the

Council office for public inspection during office hours.

The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

SECTION 1-23-40. Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

SECTION 1-23-50. Legislative Council to establish procedures.

The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

- (1) The manner of certification of copies

required to be filed under Section 1-23-40;

(2) The manner and form in which the documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;

(3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

(4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action

required under this article;

(2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;

(3) That the copy on file in the Legislative Council is a true copy of the original.

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

SECTION 1-23-70. Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

SECTION 1-23-80. Costs incurred and revenues collected by Legislative Council.

The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

SECTION 1-23-90. Complete codifications of documents; Code of State Regulations designated.

(a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

(b) A codification published under item (a) of this section shall be designated as the "Code of State Regulations". The Legislative Council may regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

(c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

(d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

SECTION 1-23-100. Exemptions for Executive Orders, proclamations or documents issued by Governor's Office; treatment of some Executive Orders for information purposes.

This article shall not apply to Executive Orders, proclamations or documents issued by the Governor's Office. However, Governor's Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the

Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

SECTION 1-23-110. Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.

(A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

(1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

(a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

(b) a synopsis of what the agency plans to draft;

(c) the agency's statutory authority for promulgating the regulation;

(2) submit to the division, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1-23-115 on regulations having a substantial economic impact;

(3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The notice must include:

(a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

(b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

(c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section-by-section discussion of the proposed regulation and a justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

(d) the statutory authority for its promulgation;

(e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1-23-120;

(f) a summary of the preliminary assessment report submitted by the agency to the division and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods

must be made part of the official record of the proposed regulations;

(h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1-23-120.

(B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

(C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

(D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

SECTION 1-23-111. Regulation process; public hearings; report of presiding official; options upon unfavorable determination.

(A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it must be conducted by an administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

(B) After allowing all written material to be submitted and recorded in the record of

the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and other factors as the presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

(C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

(a) modify the proposed regulation by including the suggested modifications of the presiding official;

(b) not modify the proposed regulation in accordance with the presiding official's suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official's written report; or

(c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

SECTION 1-23-115. Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.

(A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an

assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred-twenty-day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred-twenty-day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the State Budget and Control Board, Division of Research and Statistical Services, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the division may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the division on requests made pursuant to this section. The division shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1-23-110. The division shall forward the final assessment report and a summary of the final report to the promulgating agency.

(C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed

regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

(1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;

(2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;

(3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;

(4) the effect of the regulation on competition;

(5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;

(6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;

(7) the source of revenue to be used for implementing and enforcing the regulation;

(8) a conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;

(9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and

quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;

(10) the effect of the regulation on the environment and public health;

(11) the detrimental effect on the environment and public health if the regulation is not implemented. An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost-benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the division.

(D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the division which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

(1) regulations specifically exempt from General Assembly review by Section 1-23-120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;

(2) emergency regulations filed in accordance with Section 1-23-130; however, before an emergency regulation may be refiled pursuant to Section 1-23-130, an

assessment report must be prepared in accordance with this section;

(3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

SECTION 1-23-120. General Assembly approval of regulations.

(A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1-23-110, except those regulations requiring a final assessment report as provided in Sections 1-23-270 and 1-23-280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the division pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by Legislative Printing Information and Technology Services, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a

regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1-23-130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as

required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the division pursuant to Section 1-23-115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. *Sine die* adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1-23-125, but the introduction does not toll the one-hundred-twenty-day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state-chartered banks, state-chartered savings and loan associations, and state-chartered credit unions to engage in activities that are authorized pursuant to Section 34-1-110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical

advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;

(4) as emergency regulations under Section 1-23-130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

SECTION 1-23-125. Approval, disapproval and modification of regulations.

(A) The legislative committee to which a regulation is submitted is not authorized to

amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

(B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

(1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

(2) withdraw the regulation permanently;

(3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

(C) The notification tolls the one-hundred-twenty-day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee.

If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

(D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

(E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

SECTION 1-23-126. Petition requesting promulgation, amendment or repeal of regulation.

An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.

SECTION 1-23-130. Emergency regulations.

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions,

immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the division pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refileing emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

SECTION 1-23-140. Duties of state agencies; necessity for public inspection.

(a) In addition to other requirements imposed by law, each agency shall:

(1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

SECTION 1-23-150. Appeals contesting authority of agency to promulgate regulation.

(a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

(b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the

regulatory authority of the agency. The agency shall be made a party to the action.

SECTION 1-23-160. Prior filed regulations unaffected.

All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.

