

## **SOUTH CAROLINA STATE REGISTER DISCLAIMER**

While every attempt has been made to ensure the accuracy of this State Register, the Legislative Council makes no warranties or representations regarding its accuracy or completeness, and each user of this product understands that the Legislative Council disclaims any liability for any damages in connection with its use. This information is not intended for commercial use and its dissemination by sale or other commercial transfer is not authorized, absent a written licensing agreement with the Legislative Council. For further information contact the Legislative Council at 803-212-4500.

# SOUTH CAROLINA STATE REGISTER

PUBLISHED BY  
THE LEGISLATIVE COUNCIL  
of the  
GENERAL ASSEMBLY

STEPHEN T. DRAFFIN, DIRECTOR  
LYNN P. BARTLETT, EDITOR

P.O. BOX 11489  
COLUMBIA, SC 29211  
TELEPHONE (803) 212-4500

**Published October 26, 2007**

Volume 31    Issue No. 10

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

# ***SOUTH CAROLINA STATE REGISTER***

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

## **STYLE AND FORMAT**

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

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

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

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

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

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

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

**Executive Orders** are actions issued and taken by the Governor.

## **2007 PUBLICATION SCHEDULE**

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

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

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

## **REPRODUCING OFFICIAL DOCUMENTS**

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

## **PUBLIC INSPECTION OF DOCUMENTS**

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

## **ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS**

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

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

## **EMERGENCY REGULATIONS**

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

## **REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW**

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

## **EFFECTIVE DATE OF REGULATIONS**

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

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

## **SUBSCRIPTIONS**

Subscriptions to the *South Carolina State Register* are available electronically through the South Carolina Legislature Online website at [www.scstatehouse.net](http://www.scstatehouse.net) via an access code, or in a printed format. Subscriptions run

concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for **either** format is \$100.00. Payment must be made by check payable to the Legislative Council. To subscribe complete the form below and mail with payment. Access codes for electronic subscriptions will be e-mailed to the address submitted on this form.

X-----X-----X

***South Carolina State Register***  
**Subscription Order Form**

Name		Title	
Firm			
Mailing Address			
Billing Address (if different from mailing address)			
Contact Person(s)		E-mail Address	
Phone Number		Fax Number	
Number of subscriptions: (Cost is \$100 per subscription. Checks payable to: Legislative Council)			
		Electronic	
		Printed	

Mail this form to:  
***South Carolina State Register***  
**Lynn P. Bartlett, Editor**  
**P.O. Box 11489**  
**Columbia, SC 29211**  
Telephone: **(803) 212-4500**

**REGULATIONS SUBMITTED TO GENERAL ASSEMBLY**

Status and Legislative Review Expiration Dates ..... 1

**EXECUTIVE ORDERS**

Executive Order No. 2007-14 Requiring State Government Spending Transparency ..... 2  
 Executive Order No. 2007-15 Appointing Jasper County Sheriff..... 3  
 Executive Order No. 2007-16 Directing Workers Compensation Commission Regarding  
 Objective Standards..... 4  
 Executive Order No. 2007-17 Transferring LMI to Commerce (amended)..... 5  
 Executive Order No. 2007-18 Transferring TAA to Commerce (amended)..... 6

**NOTICES**

**BUDGET AND CONTROL BOARD**

**Office of Research and Statistics**

Data Reporting Requirements Pertaining to Submission of Ambulatory  
 Encounter Data..... 7

**EDUCATION, STATE BOARD OF**

School-to-Work Transition Act - Free Textbooks..... 7

**HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF**

Amend Air Quality State Implementation Plan - RE: Cherokee County..... 7  
 Amend Air Quality State Implementation Plan - RE: Regional Haze Rule..... 8  
 Amend (Final) Air Quality State Implementation Plan - RE: Clean Air Act..... 9  
 Certification of Need..... 10  
 Designation of Hampton County as Part of Low Country Capacity Use Area..... 12  
 Underground Storage Tanks ..... 13

**INSURANCE, DEPARTMENT OF**

**Errata**

Recognition of Preferred Mortality Tables for Use in Determining  
 Minimum Reserve Liabilities..... 13

**DRAFTING NOTICES**

**BUDGET AND CONTROL BOARD**

Procurement Regulations..... 14

**HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF**

Solid Waste Management..... 14

## TABLE OF CONTENTS

### HIGHER EDUCATION, COMMISSION ON

Life Scholarship Program .....	15
National Guard College Assistance Program.....	15
Need-based Grant Program.....	16
Palmetto Fellows Scholarship Program .....	16
Residency Program .....	17
State's Scholarship Programs.....	17

### INSURANCE, DEPARTMENT OF

Actuarial Opinion and Memorandum Regulation.....	18
--	----

### LABOR, LICENSING AND REGULATION, DEPARTMENT OF

#### Building Codes Council

Barrier Free Building Design.....	18
Modular Building Construction .....	19
Repeal Building Codes (Regulations 8-300 through 8-501).....	19

#### Board of Chiropractic Examiners

Application, Renewal, and Continuing Education.....	19
---	----

#### Panel for Dietetics

Establishing Chapter .....	20
----------------------------	----

#### Board of Pyrotechnic Safety

Alcohol, Tobacco, Firearms and Explosives Regulations .....	20
---	----

#### Board of Veterinary Medical Examiners

Chapter Revision.....	21
-----------------------	----

### REVENUE, DEPARTMENT OF

Alcoholic Beverage Licensing - Premises.....	21
--	----

### SOCIAL SERVICES, DEPARTMENT OF

Procedures and Practices of Child Placing Agencies .....	21
--	----

## PROPOSED REGULATIONS

### CLEMSON UNIVERSITY

#### Livestock-Poultry Health Commission

Document No. 3156	Meat Inspection Regulation .....	23
Document No. 3157	Poultry Products Inspections .....	24

### HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Document No. 3160	Shellfish .....	25
Document No. 3162	Standards of Performance for Asbestos Projects .....	38
Document No. 3161	Water Classification and Standards .....	52

### REVENUE, DEPARTMENT OF

Document No. 3159	Accommodation.....	57
Document No. 3164	Communications Services.....	59
Document No. 3158	Sales Tax.....	61
Document No. 3163	Sales Tax.....	63

**TABLE OF CONTENTS**

**TRANSPORTATION, DEPARTMENT OF**

Document No. 3166 Chief Internal Auditor..... 65  
Document No. 3167 Commission Approval of Actions ..... 67  
Document No. 3168 Secretary of Transportation Approval of Actions..... 69  
Document No. 3165 Transportation Project Prioritization..... 71

**FINAL REGULATIONS**

**HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF**

Document No. 3136 Radioactive Materials (Title A) ..... 73



# REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

In order by General Assembly review expiration date  
 The history, status, and full text of these regulations are available on the  
 South Carolina General Assembly Home Page: [www.scstatehouse.net](http://www.scstatehouse.net)

DOC NO.	RAT FINAL NO. ISSUE	SUBJECT	EXP. DATE	AGENCY
3119		Educational Requirements	1/13/08	LLR: Real Estate Appraisers Board
3116		Malpractice Insurance Claims	1/20/08	Department of Insurance
3117		Workers' Compensation Assigned Risk Rates	1/20/08	Department of Insurance
3109		Property Tax	1/29/08	Department of Revenue
3110		Restocking Fees	1/29/08	Department of Revenue
3122		Wildlife Management Area Regulations	4/13/08	Department of Natural Resources
3127		Chapter Revision	4/15/08	LLR: Veterinary Examiners
3125		Driver Schools and Truck Driver Training Schools	5/07/08	Department of Public Safety
3112		Environmental Protection Fees	5/07/08	Department of Health and Envir Control
3114		Tanning Facilities	5/07/08	Department of Health and Envir Control
3111		Coastal Division Regulations	5/07/08	Department of Health and Envir Control
<b>Committee Requested Withdrawal:</b>				
3118		Mobile Dental Facilities and Portable Dental Operations		LLR: Board of Dentistry
3113		Solid Waste Management		Department of Health and Envir Control

## 2 EXECUTIVE ORDERS

### Executive Order No. 2007-14

**WHEREAS**, this Administration believes that South Carolinians are entitled to full and complete information regarding how their hard-earned tax dollars are being spent by state government and they should have easy access to that information; and

**WHEREAS**, bringing transparency into state government spending will lead to more accountability for the taxpayers of South Carolina and would allow the State to benefit from increased competition because potential state contractors could easily review the relevant aspects of existing state contracts; and

**WHEREAS**, shining a light on government spending and making that information easily accessible is particularly important for taxpayers today, considering state government spending has increased over \$2 billion or 43 percent in the past four years; and

**WHEREAS**, our State has a remarkable \$18 billion in outstanding debt tied to retirement benefits, and currently has the greatest amount of state debt per person in the Southeast, further creating a need to be more cautious of how every state dollar is spent; and

**WHEREAS**, state government will grow by 15 percent in FY 2007-08 which far exceeds the growth rate of population plus inflation at 5.5 percent or the growth rate of South Carolinian's income at 6.2 percent.

**NOW, THEREFORE**, the Comptroller General's Office shall develop and operate a single, searchable website accessible at no cost to the public, which provides information regarding the expenditure of state funds. "Expenditure of state funds" means the expenditure of all appropriated or non-appropriated funds by a state agency in forms including, but not limited to, grants, contracts, and subcontracts.

(1) The Comptroller General's Office shall require all agencies to report expenditure data to the Comptroller General's Office to include, but not be limited to:

- (a) The amount of funds expended;
- (b) The expending agency;
- (c) The budget funding source; and
- (d) Any other relevant information specified by the Comptroller General's Office.

(2) The Comptroller General's Office shall analyze the likelihood of reporting these expenditures on a monthly basis.

(3) The Comptroller General's Office shall continue to enhance the level of expenditure detail and the efficiency of the website as the South Carolina Enterprise Information System (SCEIS) continues to become implemented by all state agencies.

(4) The completed searchable website must be "on-line" no later than March 1, 2008, for expenditures incurred in the 2006-07 fiscal year. Expenditures incurred in the 2007-08 fiscal year must be available on the searchable website no later than 120 days after the last day of the preceding fiscal year. All agencies of state government shall provide to the Comptroller General's Office any information requested by that Office that is necessary to accomplish the purposes of this Executive Order.

**FURTHER**, each cabinet agency must establish a searchable website on its home webpage listing specific agency expenditures.

(1) Each cabinet agency must include on its website the following expenditures set out on a monthly basis:

- (a) Travel; including but not limited to, hotel, airline, and meal expenses;
  - (b) Office supplies costing \$100 and over;
  - (c) Contractual expenses costing \$100 and over.
- (2) For each of the preceding expenditures, the cabinet agency must list the company or entity to which the expense was paid, the amount of the expense, and the date of the expense. Once fully implemented, each cabinet agency is required to update these expenses on a monthly basis for each fiscal year.
- (3) The completed searchable websites for cabinet agencies must also be “on-line” no later than March 1, 2008, for expenditures already incurred in the 2007-08 fiscal year.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 30th DAY OF AUGUST, 2007.**

**MARK SANFORD**  
Governor

**Executive Order No. 2007-15**

**WHEREAS**, a vacancy exists in the office of Jasper County Sheriff as a result of the death of Benjamin Riley; and

**WHEREAS**, the Governor of the State of South Carolina is authorized to appoint a Sheriff in the event of a vacancy pursuant to Section 23-11-40 of the South Carolina Code of Laws; and

**WHEREAS**, Allen Nathan Wooten, residing at 515 Handsome Oak Drive, Hardeeville, South Carolina 29927, is a fit and proper person to serve as Jasper County Sheriff.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Allen Nathan Wooten as Sheriff of Jasper County until a special election for this office is held pursuant to Section 23-11-140(B) of the South Carolina Code of Laws and until his successor shall qualify. This appointment shall be effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 20th DAY OF SEPTEMBER, 2007.**

**MARK SANFORD**  
Governor

## 4 EXECUTIVE ORDERS

### Executive Order No. 2007-16

**WHEREAS**, Article IV, Section 15 of the South Carolina Constitution states, in part, that “the Governor shall take care that the laws be faithfully executed”; and

**WHEREAS**, Article I, Section 3 of the South Carolina Constitution states, in part, that “the privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law”; and

**WHEREAS**, the South Carolina Supreme Court, in *Schwartz v. Mt. Vernon-Woodberry Mills, Inc.*, 206 S.C. 227, 237, 33 S.E.2d 517, 521 (1945), has stated that the South Carolina Workers’ Compensation Commission (the “Commission”) “is an administrative body belonging to the executive department of state government” (*see also* the opinion of the South Carolina Attorney General dated June 24, 2003; 2003 WL 21790884); and

**WHEREAS**, pursuant to Article IV, Section 15 and Article I, Section 3 of the South Carolina Constitution, the Governor has the constitutional obligation to ensure that the Commission and its individual commissioners, in carrying out their executive branch administrative functions, afford parties in contested cases that come before them due process of law; and

**WHEREAS**, the Supreme Court of South Carolina, in *Spruill v. Richland County Sch. Dist. 2*, 363 S.C. 61, 609 S.E.2d 524 (2005), has stated that deference is traditionally provided to an executive agency in its determination of how the agency’s functions are carried out; and

**WHEREAS**, due process of law requires that the Commission and its individual commissioners, in determining contested cases of how an injury to a worker should be compensated, must make findings of fact and conclusions of law that guarantee fundamental fairness and justice, which includes, without limitation, basing their findings and conclusions on objective medical standards; and

**WHEREAS**, the South Carolina Supreme Court, in *Therrell v. Jerry’s Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006), stated that the Commission and its individual commissioners should use “either the American Medical Association’s ‘Guides to the Evaluation of Permanent Impairment’ [AMA Guides] or ‘any other accepted medical treatise or authority’” in connection with making injury compensation awards; and

**WHEREAS**, 32 states in the United States require the use of objective medical standards in their workers’ compensation systems and workers’ compensation awards in South Carolina are currently 181% of the medical guidelines that are used by these states, and the workers’ compensation premiums paid by individuals and businesses in South Carolina have increased by 66% since 2000, the highest rate in the Southeast and outpacing all other states but one; and

**WHEREAS**, pursuant to S.C. Code Ann. § 1-3-10 (2006), public officers have a duty to “immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities,” a directive that is consistent with the constitutional authority found in Article IV, Section 17 of the South Carolina Constitution, which provides that “[a]ll state officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices...”

**NOW, THEREFORE**, I do hereby direct the Commission and each of its individual commissioners in all contested cases to strictly apply either AMA Guides or any other accepted medical treatise or authority in making their injury compensation determinations and for the Commission and each of its individual commissioners, on a quarterly basis, beginning on January 1, 2008, to provide written confirmation to the Office of the Governor that they have used, for the immediately preceding quarter, such objective standards in making such compensation awards.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 20th DAY OF SEPTEMBER, 2007.**

**MARK SANFORD  
Governor**

**Executive Order No. 2007-17**

**WHEREAS**, South Carolina needs a competitive and skilled workforce to compete in the global economy; and

**WHEREAS**, a partnership between workforce development and economic development is necessary to improve South Carolina's economic competitiveness; and

**WHEREAS**, the system for collecting economic and workforce information should be more focused on local, regional, and state economics and should be integrated to provide accessible tools, labor market information, economic development assessments, and common reporting and performance measures; and

**WHEREAS**, the Labor Market Information – One Stop Core Services program is one of the most important tools the state has for the collection of economic and workforce information needed to ensure an integrated reporting and performance measurement system; and

**WHEREAS**, the Labor Market Information – One Stop Core Services program includes workforce database, ALMIS and PEARS, employment and labor projections, and annual economic analysis; and

**WHEREAS**, positioning the Labor Market Information – One Stop Core Services program with the Workforce Investment Act program within the South Carolina Department of Commerce will help further workforce development and job creation in South Carolina.

**NOW, THEREFORE**, pursuant to the Wagner-Peyser Act, 29 U.S.C.A. Section 49, I hereby transfer the administration of the Labor Market Information - One Stop Core Services program, currently located at the South Carolina Employment Security Commission, to the South Carolina Department of Commerce in an effort to increase accountability and better coordination of workforce development and economic development within the state.

**FURTHER**, I direct the Department of Commerce and the Employment Security Commission to work together openly and cooperatively to ensure a successful transition of the Labor Market Information – One Stop Core Services program.

Executive Order 2007-13 is rescinded.

## 6 EXECUTIVE ORDERS

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 26th DAY OF SEPTEMBER, 2007.**

**MARK SANFORD**  
**Governor**

### **Executive Order No. 2007-18**

**WHEREAS**, South Carolina needs a competitive and skilled workforce to compete in the global economy; and

**WHEREAS**, it is essential to move trade-affected workers into new jobs quickly and effectively so that they continue to be productive members of the workforce; and

**WHEREAS**, the Trade Adjustment Assistance (TAA) program of the Trade Act of 1974, as amended in the Trade Adjustment Assistance Reform Act of 2002, is one of the most important tools the state has to help trade-affected workers through intervention strategies, benefits, and services designed to help rapidly provide suitable and long-term employment; and

**WHEREAS**, positioning the Trade Adjustment Assistance program with the Workforce Investment Act (WIA) program within the South Carolina Department of Commerce will allow for better coordination between available workers and job opportunities in South Carolina.

**NOW, THEREFORE**, pursuant to Public Law 105-220, Public Law 93-618, and the "Agreement between the State of South Carolina and the Secretary of Labor, United States Department of Labor, to Carry Out the Provisions of Subchapters B, C and D of Chapter 2 of Title II of the Trade Act, As Amended by the Trade Adjustment Assistance Reform Act of 2002," I hereby transfer the administration of the Trade Adjustment Assistance program, currently located at the South Carolina Employment Security Commission, to the South Carolina Department of Commerce in an effort to increase accountability and coordination of trade-affected workers within the state.

**FURTHER**, I direct the Department of Commerce and the Employment Security Commission to work together openly and cooperatively to ensure a successful transition of the program by no later than October 1, 2007.

Executive Order 2007-12 is rescinded.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 26th DAY OF SEPTEMBER, 2007.**

**MARK SANFORD**  
**Governor**

**BUDGET AND CONTROL BOARD  
OFFICE OF RESEARCH AND STATISTICS**

**NOTICE**

The Office of Research and Statistics, South Carolina Budget and Control Board proposes to amend Article 10, Data Reporting Requirements Pertaining to Submission of Ambulatory Encounter Data, Sections 19-1030A, 19-1030E, and 19-1040B(1). The amendment shall require South Carolina hospitals to submit patient records (including newborns) directly to the Office of Research and Statistics on a monthly basis.

For further information, please contact Ms. Tracy Joyce, Office of Research and Statistics, South Carolina Budget and Control Board, 1919 Blanding Street, Columbia, SC 29201, at (803) 898-9948.

**STATE BOARD OF EDUCATION**

**NOTICE**

The Public Hearing scheduled for October 10, 2007, at 10:00 a.m. on Regulations 43-225 (Supp. 2006), School-to-Work Transition Act Regulations and 43-71, Free Textbooks, has been rescheduled for November 14, 2007, at 10:00 a.m. The public hearing will be held at the Gressette Building, Room 105, 1101 Pendleton Street—Capitol Complex, Columbia, South Carolina, at 10:00 a.m. The proposed regulations were printed in the August 24, 2007, *State Register*, Volume 31, Issue 8.

Any questions or comments on R 43-225, *School-to-Work Transition Act Regulations*, should be sent to James R. Couch, EdD, Director, South Carolina Department of Education, Office of Career and Technology Education, 1429 Senate Street, Room 912 Rutledge Building, Columbia, SC or e-mail [jcouch@ed.sc.gov](mailto:jcouch@ed.sc.gov).

Any questions or comments on R 43-71, *Free Textbooks*, should be sent to Jim White, South Carolina Department of Education, 301 Greystone Blvd., Suite 150, Columbia, SC 29210 or by e-mail to [jwhite@ed.sc.gov](mailto:jwhite@ed.sc.gov).

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**PUBLIC NOTICE**

**NOTICE TO AMEND AIR QUALITY STATE IMPLEMENTATION PLAN**

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

The Department is proposing to amend the State Implementation Plan (SIP) to meet obligations of the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views in writing to Anthony Lofton, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by November 26, 2007, the close of the drafting comment period. To receive a copy of the proposed revisions to the SIP, please contact Mr. Lofton at (803) 898-7217 or [loftonat@dhec.sc.gov](mailto:loftonat@dhec.sc.gov). The Department is also conducting a public hearing on this issue. The hearing will be held on November 27, 2007, at 10:00 a.m. in room 3141 (Wallace Room) of the Sims Building, 2600 Bull Street, Columbia, South Carolina. The public is invited to attend.

## 8 NOTICES

### Synopsis:

In a *Federal Register* (FR) notice published on July 18, 1997 (62 FR 38856), the United States Environmental Protection Agency (EPA) promulgated amendments to the National Ambient Air Quality Standards (NAAQS) for ozone. Based on its review of available scientific evidence linking exposures to ambient ozone to adverse health and welfare effects at levels allowed by the 1-hour ozone standards, the EPA replaced the 1-hour primary standard with an 8-hour standard at a level of 0.08 ppm based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The 1-hour secondary standard was also replaced by an 8-hour secondary standard identical to the new primary standard. On April 30, 2004 (69 FR 23858), the EPA designated and classified Cherokee County, South Carolina, as an unclassifiable/attainment area for the 8-hour ozone NAAQS. Cherokee County is currently a maintenance area for the 1-hour ozone standard. Phase 1 of the 8-hour ozone implementation rule mandates that the State submit, in accordance with Section 110(a)(1) of the Clean Air Act (CAA), an updated maintenance plan for any area initially designated attainment for the 8-hour NAAQS that was subject to a maintenance plan for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for ten years following designation and must include contingency measures.

The Department proposes to amend the SIP to address the requirements of Section 110(a)(1) of the CAA.

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### PUBLIC NOTICE

#### NOTICE TO AMEND AIR QUALITY STATE IMPLEMENTATION PLAN

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

The Department is proposing to amend the State Implementation Plan (SIP) to meet obligations of the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views in writing to Maeve S.R. Mason, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by November 26, 2007, the close of the drafting comment period. The Department is also conducting a public hearing on this issue. The hearing will be held on November 26, 2007, at 1:30 pm in room 3141 of the Sims Building, 2600 Bull Street, Columbia, South Carolina. The public is invited to attend.

### Synopsis:

Section 169A of the Clean Air Act (CAA) provided for a national goal for visibility to include the prevention and remediation of manmade air pollution, which contributes to the visible impairment of Class I areas (areas of great scenic importance) throughout the country, including many well-known national parks and wilderness areas. As a result, in 1980, the EPA promulgated regulations to address visibility impairment that is "reasonably attributable" to one or a small group of sources located across a broad geographic area (referred to as regional haze). However, the EPA deferred action on regional haze regulations until monitoring, modeling, and scientific knowledge about the relationship between pollutants and visibility effects improved. In 1993, at the recommendation of the National Academy of Science (NAS) report, the EPA began conducting research into control technologies available for taking regulatory action to improve and protect visibility in Class I areas. On July 31, 1997, the EPA published proposed amendments to the 1980 regulations to set forth a program to address regional haze [62 FR 41138]. On July 1, 1999, and July 6, 2005, the EPA promulgated two rules known as the "Regional Haze Regulation (Regional Haze Rule)," and the "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations," (also referred to as the BART Rule) respectively.



The Regional Haze Rule was published in the *Federal Register* on July 1, 1999 [64 FR 35714]. This rule calls for States to establish goals and strategies for improving visibility in all of the country's 156 Class I national parks and wilderness areas. Cape Romain, South Carolina is one such Class I area. The EPA is requiring all states areas to revise their State Implementation Plans (SIPs) to reduce emissions of sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and particulate matter--especially fine particulate matter (PM<sub>2.5</sub>)--all of which contribute to regional haze and affect Class 1 areas.

The BART Rule was published in the *Federal Register* on July 6, 2005 [70 FR 39104]. The CAA requires that any "major stationary source" that has the potential to emit 250 tons or more of a visibility-impairing air pollutant that was put in place between August 7, 1962, and August 7, 1977, and whose operations fall within one or more of the 26 specifically listed source categories would comprise a BART-eligible source and must install the BART for controlling emissions. States must address BART in their regional haze SIPs.

The EPA has established a schedule for states to submit their SIPs. South Carolina must submit its SIP under the Regional Haze Rule to EPA by December 17, 2007.

The Department proposes to amend its SIP to address the requirements of the Regional Haze Rule and the BART rule, pursuant to Section 169A of the CAA.

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

### PUBLIC NOTICE

#### NOTICE OF FINAL AMENDMENT TO AIR QUALITY STATE IMPLEMENTATION PLAN

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

#### Synopsis:

The Department has amended the State Implementation Plan (SIP) to meet obligations under Sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA). These sections require states to submit new SIPs to provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years after the promulgation of the new or revised NAAQS. SIPs for new or revised NAAQS must contain adequate provisions to address interstate transport of pollution, pursuant to Section 110(a)(2)(D)(i). States should have submitted SIPs to the EPA for the 8-hour ozone NAAQS and the PM<sub>2.5</sub> NAAQS no later than July 2000. However, litigation over both of the standards created substantial uncertainty among the states and EPA as to how to proceed. Also, regarding PM<sub>2.5</sub>, additional time was needed for the creation of a monitoring network, collection of at least three years of data, and analysis of those data.

On April 25, 2005, EPA published an action in the *Federal Register* [70 FR 21147] making a finding that states had failed to make the statutorily-required SIP submissions for the 8-hour ozone and PM<sub>2.5</sub> NAAQS. The EPA limited this finding of failure to submit to the requirements of 110(a)(2)(D)(i) pertaining to interstate transport. This finding started a 24-month clock, as of May 25, 2005, for EPA to issue a final Federal Implementation Plan (FIP) to meet the requirements of Section 110(a)(2)(D)(i) for both 8-hour ozone and PM<sub>2.5</sub> unless the EPA approves a SIP to meet those requirements.

The Department is showing compliance with this obligation as follows: (1) Prevention of Significant Deterioration - confirming that major sources in the State are currently subject to PSD/NNSR permitting programs (implemented in accordance with EPA's interim guidance calling for use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub>) and our satisfaction of 8-hour ozone SIP requirements; (2) Visibility Impairment - submitting a Regional Haze SIP on or by the December 17, 2007, deadline; and (3) Contribution to nonattainment/interference with maintenance of NAAQS in another state - participation of the State in the Clean Air Interstate Rule (CAIR) program.

## 10 NOTICES

The Department published a notice of intent to amend the SIP and an announcement of a 30-day comment period and public hearing in the *State Register* on April 27, 2007. A prehearing package was submitted to the EPA on May 25, 2007, and a public hearing was held on May 30, 2007, the end of the comment period. No comments were received. The Department intends to submit a Notice of Final SIP Amendment to the EPA upon publication of this notice.

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### PUBLIC NOTICE

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication October 26, 2007, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Charleston County

Acquisition of surgical robotics equipment to be used in the existing surgical department  
MUSC Medical University Center  
Charleston, South Carolina  
Project Cost: \$2,197,400

Affecting Dorchester County

Change of licensure of forty-four (44) of the existing eighty-seven (87) licensed institutional nursing home beds which do not provide a community service resulting in a total licensed bed capacity of forty-three (43) institutional nursing home beds and forty-four (44) nursing home beds nursing home beds which will not participate in the Medicaid (Title XIX) Program  
Presbyterian Home of South Carolina – Summerville  
Summerville, South Carolina  
Project Cost: \$0

Affecting Greenville County

Acquisition of a 1.5T Magnetic Resonance Imaging (MRI) unit to be installed in a permanent modular building at the rear of the existing facility located at 1050 Grove Road  
Piedmont Orthopaedic Associates, PA  
Greenville, South Carolina  
Project Cost: \$2,573,913

Purchase of a 1.0T Extremity Magnetic Resonance Imaging (MRI) system by Greenville Hospital System to be installed in the Greer MOB office located on the Greer Medical Campus

Steadman Hawkins Clinic of the Carolinas, LLC  
 Greenville, South Carolina  
 Project Cost: \$735,478

Affecting Horry County

Construction of a thirty-two (32) bed nursing home that does not participate in the Medicaid (Title XIX) Program  
 Brightwater Skilled Nursing Center  
 Myrtle Beach, South Carolina  
 Project Cost: \$4,215,436

Affecting Richland County

Change of Licensure of twenty-two (22) of the existing forty-four (44) licensed institutional nursing home beds which do not provide a community service resulting in a total licensed bed capacity of twenty-two (22) institutional nursing home beds and twenty-two (22) nursing home beds which will not participate in the Medicaid (Title XIX) Program  
 Presbyterian Home of South Carolina – Columbia  
 Columbia, South Carolina  
 Project Cost: \$0

Construction of a new patient bed tower and modernization of the existing facility resulting in all private patient rooms; the total licensed bed capacity will remain at two-hundred fifty-eight (258) general acute care beds  
 Providence Hospital  
 Columbia, South Carolina  
 Project Cost: \$57,094,613

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning October 26, 2007. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Charleston County

Acquisition of surgical robotics equipment to be used in the existing surgical department  
 MUSC Medical University Center  
 Charleston, South Carolina  
 Project Cost: \$2,197,400

Affecting Greenville County

Installation of a fixed 1.5T Magnetic Resonance Imaging (MRI) unit and 16 slice Computed Tomography (CT) scanner  
 Greer Memorial Hospital  
 Greer, South Carolina  
 Project Cost: \$4,000,000

## 12 NOTICES

Affecting Greenwood County

Replacement of the existing mobile Positron Emission Tomography/Computed Tomography (PET/CT) unit currently approved for use one day (1) day per week with a mobile PET/CT unit to be used three (3) days per week

Self Regional Healthcare  
Greenwood, South Carolina  
Project Cost: \$995,200

Affecting Lancaster County

Construction of a freestanding radiation therapy center to include the purchase and installation of a fixed linear accelerator

Lancaster Radiation Therapy Center  
Lancaster, South Carolina  
Project Cost: \$6,160,118

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### PUBLIC NOTICE

#### NOTICE OF PUBLIC HEARING AND OPPORTUNITY FOR PUBLIC COMMENT ON PROPOSED DESIGNATION OF CAPACITY USE AREA

The South Carolina Department of Health and Environmental Control proposes the designation of Hampton County as part of the Low Country Capacity Use Area. Interested persons are invited to make oral or written comments on the proposed Capacity Use Area at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on January 10, 2008. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building, of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. The Board's agenda will be published 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed Capacity Use Area to Mr. Charles Gorman at SCDHEC, Bureau of Water, 2600 Bull St., Columbia, SC, 29201. Written comments must be received no later than 5:00 p.m. on November 26, 2007. Comments received by the deadline date will be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

SCDHEC's technical report on groundwater conditions in the Hampton County area is available on the Internet at <http://www.scdhec.gov/environment/water/docs/cuhamptonreport.pdf>. SCDHEC's Fact Sheet summarizing the groundwater conditions in the Hampton County area and general information about the Capacity Use Program are available at <http://www.scdhec.gov/environment/water/docs/cuhamptonfact.pdf>. In addition, a copy of the report and fact sheet may be obtained by contacting Ms. Gloria Lathan at 803-898-4267.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**NOTICE**

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

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

Pursuant to Section IV.B.1. the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than November 25, 2007 to:

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

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

Class I

Zapata Engineering, P.A.  
 Attn: R. Marty Ray  
 6302 Fairview Rd, Ste 600  
 Charlotte, NC 28210

Class II.

ECS Carolinas, LLP

Attn: Roger A. Smith, PG  
 8702 Red Oak Blvd, Ste A  
 Charlotte, NC 28217

**DEPARTMENT OF INSURANCE**

**ERRATA**

69-57.2. Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities

The amendment of R.69-57.2, Document Number 3115, published as final in the *South Carolina State Register*, Volume 31 Issue 5 (May 25, 2007), is corrected so that the April 1, 2007 date set forth in Section 4 is changed to January 1, 2007.

## 14 DRAFTING

### BUDGET AND CONTROL BOARD

#### CHAPTER 19

Statutory Authority: 1976 Code Section 11-35-10 et seq.

#### Notice of Drafting:

The Budget and Control Board proposes to amend Regulation 19-445. Interested persons may submit comments to Materials Management Office, Attn: Keith McCook, 1201 Main Street, Suite 600, Columbia, S.C. 29201 or to [regulations@mmo.state.sc.us](mailto:regulations@mmo.state.sc.us).

#### Synopsis:

The Consolidated Procurement Code, which was amended in 2006, authorizes the Budget and Control Board to promulgate regulations governing the procurement, management, control, and disposal of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35. (Sections 11-35-60 & -540(1)) The proposed regulation will address various matters regarding Regulation 19-445 and procurement in general. Construction will be the focus.

Legislative review of this proposal will be required.

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### CHAPTER 61

Statutory Authority: 1976 Code Sections 44-96-10 et seq.

#### Notice of Drafting:

The Department of Health and Environmental Control is proposing to amend R.61-107, Solid Waste Management Regulations. Interested persons may submit their views by writing to Joan Litton at S.C. Department of Health and Environmental Control, Bureau of Land and Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting period.

#### Synopsis:

The Department is proposing to amend Regulation Section 61-107.17, Solid Waste Management: Demonstration-of-Need. Changes the Department are considering include, but are not limited to, revision of the size of the planning areas around solid waste facilities, the maximum annual disposal limit, definitions, and expansion of the scope of the regulation by defining needs determination criteria for other types of solid waste facilities.

The Department is also proposing to update Section 61-107.17 for consistency with the changes proposed in State Register Document No. 3113 that are pending completion of the legislative review process. In April of 2007, the Department filed Document No. 3113, a proposed amendment of R.61-107, Solid Waste Management Regulations, with the General Assembly for legislative review. Document No. 3113 simultaneously repeals four existing solid waste landfill sections and replaces them with new Section 61-107.19 that addresses all solid waste landfills and structural fill activities. If the Legislature does not approve R.61-107.19, the proposed amendment of R.61-107.17 will be either revised or withdrawn.

Legislative review is required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
 Statutory Authority: 1976 Code Section 59-149-10

**Notice of Drafting:**

The South Carolina Commission on Higher Education proposes to draft a new regulation that addresses the changes to the State's LIFE Scholarship Program. Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

**Synopsis:**

The General Assembly passed Act 115 that established an additional stipend for LIFE Scholarship recipients majoring in math and science degree programs. The stipend increases the LIFE Scholarship award amount by \$2,500 for a total award amount of \$7,500 for students majoring in eligible math or science program. The increased award is to begin during the student's Sophomore or second year of attendance at a four-year institution, provided that the student has completed at least 14 hours of mathematics and science courses during his/her Freshman year of attendance.

The proposed regulation provides the eligibility criteria that students must meet in order to be awarded LIFE Scholarship Enhancement funds. In addition, the proposed regulation also provides the procedures that institutions must follow when determining students' eligibility and when disbursing LIFE Scholarship Enhancement funds to eligible students.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
 Statutory Authority: 1976 Code Section 59-114-75

**Notice of Drafting:**

The South Carolina Commission on Higher Education proposes to draft a new regulation that would allow qualifying members of the South Carolina Army and Air National Guard to receive college assistance grants and amend section 59-111-5, relating to the Loan Repayment Program for members of the National Guard. Interested persons may submit comments to Mr. Michael L. Brown, Division of Access and Equity, S.C. Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

**Synopsis:**

The General Assembly passed the "National Guard College Assistance Program" (Chapter 114) that established a State administered program to provide college assistance program grants to eligible members of the National Guard to receive assistance covering 100% of their college tuition, but not exceeding \$18,000 annually. The grants are subject to funds being appropriated by the General Assembly. The Act requires the S.C. Commission on Higher Education to administer the grants program. This Act ends the current loan repayment program beginning with the 2007-08 academic year.

## 16 DRAFTING

The proposed regulation will address the Commission on Higher Education promulgating regulations to amend section 59-111-75 relating to the Loan Repayment Program for members of the National Guard, and to provide that any funds remaining in the Loan Repayment Program be transferred to the College Assistance Program.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
CHAPTER 62  
Statutory Authority: 1976 Code Section 59-104-20

### Notice of Drafting:

The South Carolina Commission on Higher Education proposes to amend regulations for the South Carolina Need-based Grant Program. Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

### Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-460 (Q) of the South Carolina Need-based Grant Program. The General Assembly passed Act 103 establishing that any LIFE, Palmetto Fellows, S.C. HOPE or S.C. Need-based Grant recipient who is adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any second or subsequent alcohol or drug-related offenses under the laws of this or any other state or under the laws of the United States will lose their State Scholarship or Grant for the following academic year. In addition, the Commission on Higher Education proposes to amend and replace in its entirety R.62-465 (A) (3) in identifying a South Carolina resident.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
CHAPTER 62  
Statutory Authority: 1976 Code Section 59-104-25

### Notice of Drafting:

The South Carolina Commission on Higher Education proposes to promulgate regulations for the South Carolina Palmetto Fellows Scholarship Program. Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

### Synopsis:

Pursuant to Act 115, which was established in 2007 as Title 59 of the 1976 code during the 2007 legislative session, the Commission on Higher Education would like to promulgate regulation and establish procedures for the administration of the Palmetto Fellows Scholarship Enhancement. The General Assembly established the Palmetto Fellows Scholarship Enhancement in order to foster scholarship among the State's postsecondary students through awards based on scholarship and achievement. The purpose of the Palmetto Fellows Scholarship Enhancement program is to recognize the most academically talented college students throughout the state of



South Carolina in the areas of mathematics and science and encourage them to attend eligible colleges or universities in the State.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
CHAPTER 62

Statutory Authority: 1976 Code Section 59-104-20

**Notice of Drafting:**

The South Carolina Commission on Higher Education proposes to amend regulations for the South Carolina Residency Program. Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

**Synopsis:**

The Commission on Higher Education proposes to amend and replace in its entirety R.62-600 of the SC Residency Program. Revisions to the existing regulation for the SC Residency Regulation are being considered to clarify the policies and procedures for administering the program. In the proposed amendment, the definition of a dependent is clarified and the use of voter registration cards to prove SC residency will be prohibited. In addition, institutional residency officers will be allowed to develop an appeal process for students to challenge institutional residency decisions. There are also additional clarifications being proposed, such as adding definitions and minor grammatical changes to promote consistency among the State institutions and their residency classification processes.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
CHAPTER 62

Statutory Authority: 1976 Code Section 59-104-20

**Notice of Drafting:**

The South Carolina Commission on Higher Education proposes to draft new regulations that address the changes to the State's Scholarship Programs. Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007, the close of the drafting comment period.

**Synopsis:**

The General Assembly passed Act 115 that raises the amount a SC HOPE Scholarship may receive during their first year of attendance from \$2,650 to \$2,800.

The General Assembly passed Act 103 establishing that any LIFE, Palmetto Fellows, SC HOPE or SC Need-based Grant recipient who is adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any second or subsequent alcohol or drug-related offenses under the laws of this or any other state or under the laws of the United States will lose their State Scholarship or Grant for the following academic year.

Legislative review of this proposal will be required.

## 18 DRAFTING

### DEPARTMENT OF INSURANCE

#### CHAPTER 69

Statutory Authority: S.C. Code Ann. Sections 38-3-110 and 38-9-180.

#### **Notice of Drafting:**

The South Carolina Department of Insurance proposes to amend Regulation 69-52, Actuarial Opinion and Memorandum Regulation. Interested persons may submit written comments to Leslie Jones, Deputy Director, Actuarial Services, 145 King Street, Suite 207, Charleston, SC 29401. To be considered, all comments must be received no later than 5:00 p.m., November 30, 2007.

#### **Synopsis:**

The Department of Insurance proposes to amend the regulation to require all life insurance companies and fraternal benefit societies licensed in this state to have an actuarial opinion which is based on an asset adequacy analysis. The Director will have the ability to exempt a single-state domestic insurer from the asset adequacy requirement if it is deemed unnecessary due to the nature of its business. The revisions also: 1) allow greater flexibility for states to accept a state of domicile opinion from another state and specify alternate opinions to be used for this purpose; 2) replace the requirement to use specific interest rate scenarios for purposes of performing the asset adequacy analysis with a requirement to provide a regulatory asset adequacy issues summary as specified in the regulation; and 3) add additional documentation requirements to the actuarial memorandum. The revisions are based upon the most recent version of the NAIC model regulation which will become an accreditation standard for actuarial opinions issued on or after January 1, 2009.

Legislative review of this proposal will be required.

### DEPARTMENT OF LABOR, LICENSING AND REGULATION

#### BUILDING CODES COUNCIL

#### CHAPTER 8

Statutory Authority: 1976 Code Sections 40-1-40, 40-1-70, 10-5-220, et seq.

#### **Notice of Drafting:**

The South Carolina Building Codes Council intends to amend the Regulations for the Barrier Free Building Design Act and move the regulations from Chapter 19 (Budget and Control Board) to Chapter 8 so that they are accessed through the Department of Labor, Licensing and Regulation, which administers the Barrier Free Design program. The Council specifically requests comments concerning the proposed amendment. Written comments may be submitted to Gary F. Wiggins, Council Administrator, at P.O. Box 11329, Columbia, SC 29211-1329.

#### **Synopsis:**

The purpose of the amendments is to provide access to the regulations through the Department of Labor, Licensing and Regulation, which administers the Barrier Free Design Program; and to remove redundant language and update the regulations.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BUILDING CODES COUNCIL**

CHAPTER 8

Statutory Authority: 1976 Code Sections 23-43-40 and 40-1-70

**Notice of Drafting:**

The South Carolina Building Codes Council intends to amend regulations for the Modular Building Construction Act and move the regulations from Chapter 19 (Budget and Control Board) to Chapter 8 so that they are accessed through the Department of Labor, Licensing and Regulation, which administers the Modular Building Program. The Council specifically requests comments concerning the proposed amendments. Written comments may be submitted to Gary F. Wiggins, Council Administrator, at P.O. Box 11329, Columbia, SC 29211-1329.

**Synopsis:**

The purpose of the amendments is to clarify the intent and assure accountability, for the retail sale of modular buildings; to provide access to the regulations through the Department of Labor, Licensing and Regulation, which administers the Modular Building Program; and to remove obsolete language and update the regulations.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BUILDING CODES COUNCIL**

CHAPTER 8

Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

**Notice of Drafting:**

The South Carolina Building Codes Council intends to amend the Regulations for the Building Codes Act by repealing Regulations 8-300 through 8-501 (Articles 3 through 5). The Council specifically requests comments concerning the proposed amendment. Written comments may be submitted to Gary F. Wiggins, Administrator, at P.O. Box 11329, Columbia, SC 29211-1329.

**Synopsis:**

The proposed amendment will remove unnecessary language from the regulations. Several modifications contained in the existing regulations conflict with language in the updated building codes or their modifications. With the adoption of 2007 Act 54, building code modifications are not required to be placed nor maintained in regulatory form.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BOARD OF CHIROPRACTIC EXAMINERS**

CHAPTER 25

Statutory Authority: 1976 Code Sections 40-9-30 and 40-1-70

**Notice of Drafting:**

The Board of Chiropractic Examiners is considering amending its regulations in regard to application, renewal and continuing education. Written comments may be submitted to Sondra D. Stephenson, Board Administrator, at 110 Centerview Drive, Columbia, South Carolina, 29211-1329. The Board specifically requests comments on increasing the continuing education requirements to thirty-six (36) hours for each biennial renewal period in recognition of the rapid pace of research and development in the profession.

## 20 DRAFTING

### Synopsis:

The purpose of the amendment of regulations is to modernize application and renewal processes and to increase the amount of required continuing education.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**PANEL FOR DIETETICS**  
CHAPTER 40

Statutory Authority: 1976 Code Sections 40-20-50 and 40-1-70

### Notice of Drafting:

The Department of Labor, Licensing and Regulation is proposing to establish regulations necessary to carry out and enforce the provisions of the South Carolina Dietetics Licensure Act, Title 40, Chapter 20, of the 1976 Code of Laws of South Carolina, as amended (2006 Act 392) regarding the licensure and regulation of persons engaging in the practice of dietetics and nutrition within the State of South Carolina. Written comments can be submitted to the Department of Labor, Licensing and Regulation, Attn: Deborah E. White, Program Coordinator, 110 Centerview Drive, Columbia, South Carolina, 29211-1329.

### Synopsis:

The purpose of these regulations is to establish necessary regulations to carry out and enforce the provisions of the South Carolina Dietetics Licensure Act Title 40, Chapter 20, of the 1976 Code of Laws of South Carolina, as amended, (2006 Act 392), to provide for licensure and regulation of persons engaging in the practice of dietetics and nutrition within the State of South Carolina including establishment of criteria for licensure and license renewal, to establish the scope of practice for dietitians, and to provide grounds for misconduct, including criminal penalties.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF PYROTECHNIC SAFETY**  
CHAPTER 71

Statutory Authority: 1976 Code Sections 40-56-20 and 40-1-70

### Notice of Drafting:

The Department of Labor, Licensing and Regulation, Board of Pyrotechnic Safety proposes to amend its regulations to update and remove potential conflicts with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations and current building and maintenance codes. The Board also proposes to repeal existing Regulations 19-405.1 through 19-405.9 and replace with Regulations 71-7405.1 through 71-7405.8. Written comments may be submitted to John Reich, South Carolina State Fire Marshal, 141 Monticello Trail, Columbia, SC 29203.

### Synopsis:

The Board of Pyrotechnic Safety proposed amendments are intended to update the regulations to agree with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations and current building and maintenance codes. The proposed change in certification regulations reflects the restructuring of State government and will assure more regulated public accessibility. The Board also proposes to repeal existing Regulations 19-405.1 through 19-405.9 and replace them with Regulations 71-7405.1 through 71-7405.8 to be accessed through

the Department of Labor, Licensing and Regulation, rather than through the Budget and Control Board, which has not administered the regulatory program since 1994.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BOARD OF VETERINARY MEDICAL EXAMINERS**

CHAPTER 120

Statutory Authority: 1976 Code Section 40-69-70, et seq.

**Notice of Drafting:**

The Board of Veterinary Medical Examiners is considering repealing existing Regulations 120-1.1 through 120-12.1 and replacing with new Regulations 120-1 through 120.10 in conformance with 2006 Act 294. Written comments may be submitted to Sondra Stephenson, Board Administrator, at 110 Centerview Drive, Columbia, South Carolina, 29211-1329.

**Synopsis:**

The Department of Labor, Licensing and Regulation, Board of Veterinary Medical Examiners, proposes to repeal existing Regulations 120-1.1 through 120-12.1 and replacing with new Regulations 120-1 through 120-10 in conformance with 2006 Act 294.

**DEPARTMENT OF REVENUE**

CHAPTER 7

Statutory Authority: 1976 Code Section 12-4-320

**Notice of Drafting:**

The South Carolina Department of Revenue is considering amending Regulations 7-401, 7-401.1, and 7-700 to revise the definition of “premises” for purposes of licenses or permits for beer, wine and liquor by the drink issued pursuant to Chapters 4 and 6, Title 61.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on November 27, 2007.

**Synopsis:**

The South Carolina Department of Revenue is considering amending Regulations 7-401, 7-401.1, and 7-700 to revise the definition of “premises” for purposes of licenses or permits for beer, wine and liquor by the drink issued pursuant to Chapters 4 and 6, Title 61.

**DEPARTMENT OF SOCIAL SERVICES**

CHAPTER 114

Statutory Authority: 1976 Code Section 20-7-2250

**Notice of Drafting:**

The South Carolina Department of Social Services proposes to repeal R.114.4980(H)(2). Interested persons may submit comments to Ms. Mary C. Williams, South Carolina Department of Social Services, Post Office Box 1520,

## 22 DRAFTING

Columbia, South Carolina 29202. To be considered, comments must be received no later than 5:00 p.m. on November 26, 2007.

### **Synopsis:**

The “Multi-Ethnic Placement Act” (MEPA) was enacted in 1994 to address the concern of children, particularly minority children, experiencing lengthy delays in achieving permanence through adoption. The MEPA makes it unlawful for child placing agencies to delay or deny placing a child with prospective parents on the basis of the child’s race, color, or national origin. In 1996 the MEPA was amended to make clear that child placing agencies must not discriminate against children, prospective parents, and communities in making placement decisions. The 1996 amendments also strengthen federal enforcement procedures.

South Carolina Code Section 20-7-2250 provides that the Department of Social Services shall be responsible for making and promulgating rules and regulations relating to licensing standards and other matters essential to the operation of child placing agencies. R.114.4980(H) sets forth criteria that child placing agencies must evaluate in selecting appropriate substitute care for children. Specifically, R.114.4980(H)(2) states that child placing agencies must consider “a child’s racial, cultural, ethnic, and religious heritage and preserve them to the greatest extent possible.” This provision contravenes the MEPA and the amendments set forth in the interethnic adoption provisions of 1996.

The MEPA and the interethnic adoption amendments of 1996 require the repeal of R.114.4980(H)(2). The repeal of this regulation would meet the requirements prescribed by federal law. The Department of Social Services proposes the repeal of R.114.4980(H)(2) to comply with federal law.

Document No. 3156  
**CLEMSON UNIVERSITY**  
**STATE LIVESTOCK-POULTRY HEALTH COMMISSION**  
 CHAPTER 27  
 Statutory authority: 1976 Code Section 47-4-30 and 47-17-130

R.27-1023. State Meat Inspection Regulation

**Preamble:**

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection of meat and meat food products produced for intrastate commerce. These updated regulations are necessary to comply with the Federal Meat Inspection Act (21USCA 661, Section 301) which established Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations “at least equal to” those adopted by the federal government. This regulation will, in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on August 24, 2007.

**Notice of Public Hearing and Opportunity for Public Comment:**

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be held at the South Carolina Meat-Poultry Inspection Department, 500 Clemson Road, Columbia, S.C. on December 3, 2007 at 10:00 a.m. If no request is received by November 26, 2007 the hearing will be canceled. Written comments may be directed to Dr. Daniel E. Lafontaine, Director, South Carolina Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, SC 29224-2406 not later than November 26, 2007

**Preliminary Fiscal Impact Statement:**

No additional state funding is requested.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: State Meat Inspection Regulations

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

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

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

DESCRIPTION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: None

DETERMINATION OF COSTS AND BENEFITS: None

## 24 PROPOSED REGULATIONS

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None

**Statement of Rationale:** None

**Summary of Preliminary Assessment Report:** None

**Text:**

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

Document No. 3157

**CLEMSON UNIVERSITY**

**STATE LIVESTOCK-POULTRY HEALTH COMMISSION**

**CHAPTER 27**

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

R.27-1022. State Poultry Regulations

**Preamble:**

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce. These updated regulations are necessary to comply with the federal Poultry Products Inspection Act (21USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations "at least equal to" those adopted by the federal government. This regulation will, in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on August 24, 2007.

**Notice of Public Hearing and Opportunity for Public Comment:**

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be held at the South Carolina Meat-Poultry Inspection Department, 500 Clemson Road, Columbia, S.C. on December 3, 2007 at 10:00 a.m. If no request is received by November 26, 2007 the hearing will be canceled. Written comments may be directed to Dr. Daniel E. Lafontaine, Director, South Carolina Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, SC 29224-2406 not later than November 26, 2007.

**Preliminary Fiscal Impact Statement:**

No additional state funding is requested.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: State Poultry Inspection Regulations



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

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

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

DESCRIPTION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: None  
DETERMINATION OF COSTS AND BENEFITS: None

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None

**Statement of Rationale:** None

**Summary of Preliminary Assessment Report:** None

**Text:**

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

Document No. 3160  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTER 61  
Statutory Authority: 44-1-140 (1976, as amended).

R61-47. Shellfish

**Preamble:**

The Department is proposing to amend the Shellfish Regulations to bring them up to date with current National Shellfish Sanitation Program guidance and practices; include a section on severability; update and expand definitions; update certification and permitting procedures; update growing area survey and classification standard references; update requirements for the harvesting, handling and transportation of shellfish; update compliance and inspection procedures; update certified shipper facility and aquaculture requirements; and revise style, language, and grammar for clarity, readability and consistency. See Section-by-Section Discussion below and Statement of Need and Reasonableness herein.

A Notice of Drafting for these proposed amendments was published in the State Register on May 25, 2007.

## 26 PROPOSED REGULATIONS

### Section-by-Section Discussion of Proposed Amendments

#### SECTION CITATION AND EXPLANATION OF CHANGE

##### TABLE OF CONTENTS

Table of contents is revised to reflect the primary title and outline level of the regulatory text.

##### A.1.

Subsection amended to more accurately define purpose, scope and intent. The subsection also corrects an inaccurate reference to the national shellfish guidance organization and model code. National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish reflects the correct title of the document published by the United States Food and Drug Administration that includes a shellfish model ordinance, public health reasons and explanations, guidance documents, National Shellfish Sanitation Program policy setting documents, federal regulations related to molluscan shellfish, FDA manual of interpretations, and suggested forms for use in producing and controlling shellfish produced for sale in interstate commerce.

##### A.2.(a)(2)

Item amended to include shellfish that have not been tagged or labeled in accordance with the regulation.

##### A.2.(a)(4)

Item amended for grammar.

##### A.2.(a)(5)

Item amended for grammar.

##### A.2.(a)(6)

Amended for grammar and to refer to "authorized" in lieu of "approved."

##### A.2.(a)(7)

Item amended to delete identification requirements and include "poisonous or deleterious substance at levels or concentrations likely injurious to public health."

##### A.2.(c)

New item added. New definition inserted for "Approved."

##### A.2.(d)

Item renumbered and "Approved Area" amended for clarity and readability.

##### A.2.(e)

Item renumbered and "Aquaculture" amended for clarity and readability.

##### A.2.(f)

Item renumbered and "Bulk Shipment" amended to "Bulk" for clarity. Includes three sub-items that will be considered bulk for identification purposes.

##### A.2.(g)

Item renumbered.

##### A.2.(h)

Item renumbered and "Certification Number" amended for stylistic consistency.

##### A.2.(i)

New item added. New definition inserted for "Classification or Classify."

##### A.2.(j)

New item added. New definition inserted for "Classified Growing Area."

##### A.2.(k)

Item renumbered and "Closed Area" amended for clarity and readability.

##### A.2.(l)

Item renumbered and "Coliform Group" amended for stylistic consistency.

##### A.2.(m)

Item renumbered.

##### A.2.(n)

New item added. New definition inserted for "Conditionally Approved."

##### A.2.(o)

Item renumbered and "Conditionally Approved Area" amended to accurately reflect classification of growing areas as opposed to water, and the determination of the appropriate specific environmental conditions or time periods. Also amended for clarity and readability.

A.2.(p)

New item added. New definition inserted for "Conditionally Restricted."

A.2.(q)

Item renumbered and "Conditionally Restricted Area" amended to accurately reflect classification of growing areas as opposed to water, and the determination of the appropriate specific environmental conditions. Also amended for clarity and readability.

A.2.(r)

Item renumbered.

A.2.(s)

Item renumbered and "Critical Control Point (CCP)" amended for punctuation and clarity.

A.2.(t)

Item renumbered and amended for stylistic consistency.

A.2.(u)

Item renumbered.

A.2.(v)

Item renumbered.

A.2.(w)

Item renumbered.

A.2.(x)

Item renumbered.

A.2.(y)

Item renumbered.

A.2.(z)

Item renumbered.

A.2.(aa)

Item renumbered.

A.2.(bb)

Item renumbered.

A.2.(cc)

Item renumbered and "Fecal coliform" amended for stylistic consistency.

A.2.(dd)

Item renumbered and "Growing Area" amended as estuaries or coastal rivers delineated by the Department. Growing area and growing waters become synonymous.

A.2.(ee)

Item renumbered.

A.2.(ff)

Item renumbered and HACCP Plan amended to update CFR reference.

A.2.(gg)

Item renumbered.

A.2.(hh)

Item renumbered.

A.2.(ii)

New item added. New definitions inserted for "Lot."

A.2.(jj)

Item renumbered.

A.2.(kk)

New item added. New definition for National Shellfish Sanitation Program.

A.2.(ll)

New item added. New definition for National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

## 28 PROPOSED REGULATIONS

A.2.(mm)

Item renumbered.

A.2.(nn)

Item renumbered.

A.2.(oo)

New item added. New definition inserted for "Post Harvest Processing."

A.2.(pp)

Item renumbered.

A.2.(qq)

New item added. New definition inserted for "Processor".

A.2.(rr)

New item added. New definition inserted for "Prohibited."

A.2.(ss)

Item renumbered and "Prohibited Area" amended to refer to growing areas closed by the Department in lieu of waters classified by the Department as prohibited. Also amended to state for "direct" human consumption.

A.2.(tt)

New item added. New definition inserted for "Raw."

A.2.(uu)

Item renumbered and "Relaying" amended for stylistic consistency.

A.2.(vv)

Item renumbered and "Repacker" amended for stylistic consistency.

A.2.(ww)

Item renumbered.

A.2.(vv)

Item renumbered and "Reshipper" amended for stylistic consistency.

A.2.(xx)

New item added. New definition inserted for "Restricted".

A.2.(zz)

Item renumbered and "Restricted Area" amended to refer to growing areas in lieu of waters. Also amended for clarity and readability.

A.2.(aaa)

Item renumbered and Sanitary Survey Report amended for stylistic consistency.

A.2.(bbb)

Item renumbered.

A.2.(ccc)

Item renumbered and "Scheduled Depuration Process" amended for stylistic consistency. Also amended to substitute "has been demonstrated to" in lieu of "is approved by," delete "as adequate," and insert "fecal coliform" and delete "viruses".

A.2.(ddd)

Item previously renumbered has been revised to amend "Seed" definition.

A.2.(eee)

Item renumbered.

A.2.(fff)

Item renumbered and "Shellstock" amended for consistency with National Shellfish Sanitation Program Model Ordinance definition.

A.2.(ggg)

Item renumbered and "Shellstock Shipper" amended for stylistic consistency.

A.2.(hhh)

Item renumbered. Also amended for stylistic consistency.

A.2.(iii)

Item renumbered and "Shucker-Packer (SP)" amended for stylistic consistency.

A.2.(jjj)

New item added. New definition inserted for "State Shellfish Control Authority."

- A.2.(kkk)  
Item renumbered.
- A.2.(lll)  
Item renumbered and "Vehicle" amended.
- A.2.(mmm)  
New item added. New definition inserted for "Vessel."
- A.2.(nnn)  
Item renumbered.
- A.3.  
New subsection added. Subsection "Severability" added per instruction of Department regulatory development staff for consistency with other Department regulations.
- B.1.  
Amended to properly reference National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. "Will" amended to "shall" for consistency.
- B.2.  
Amended to reference newly defined "growing area" and for punctuation and stylistic consistency.
- B.3.  
Amended to accurately reflect National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish statistical water quality requirements for the approved classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed approved criteria. References the location of the methodology to be used in determining the estimated 90th percentile. Also amended for punctuation and stylistic consistency, grammar, and readability.
- B.4.(a)  
Amended to remove references to "malfunction of wastewater treatment facilities" and "potential discharges from dock or harbor facilities that may affect water quality" which are typically unpredictable. Also amended for punctuation.
- B.4.(b)  
Amended to emphasize that approved criteria must be met for a period of time in order to likely assure shellfish are safe for consumption. Also amended for grammar.
- B.4.(c)  
Amended for stylistic consistency.
- B.5.(a)  
Amended to replace "limited" with "moderate" and for stylistic consistency.
- B.5.(b)  
Amended for stylistic consistency.
- B.5.(c)  
Amended to accurately reflect National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish statistical water quality requirements for the restricted classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed restricted criteria. References the methodology to be used in determining the estimated 90th percentile. Also amended for stylistic consistency and readability.
- B.6.(a)  
Amended for punctuation, grammar, and stylistic consistency.
- B.6.(b)  
Amended for stylistic consistency.
- B.6.(c)  
Amended to accurately reflect the National Shellfish Sanitation Guide for the Control of Molluscan Shellfish statistical water quality requirements for the conditionally restricted classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed referenced criteria. References the methodology to be used in determining the estimated 90th percentile. Also amended for punctuation, stylistic consistency, and readability.

### 30 PROPOSED REGULATIONS

B.7.(a)

Amended for stylistic consistency and to insert "report" for consistency with definitions, and to insert "otherwise" prior to "indicate."

B.7.(b)

Amended for stylistic consistency and to allow seed hatchery or nursery operations to operate in prohibited areas under certain conditions.

B.7.(c)

Amended for stylistic consistency.

B.7.(d)

Amended for stylistic consistency and clarity, and to address growing "areas" in lieu of growing "waters", and to replace "adjacent to" with "receiving."

B.7.(e)

Amended for stylistic consistency, readability and clarity, and to include verbiage "and adjacent to."

B.7.(e)(2)

Amended for stylistic consistency.

B.7.(e)(7)

Amended for stylistic consistency.

B.7.(f)

New item added. This item addresses existing, historical marina closures of one-thousand feet and prescribes that, in the event that a permit or certificate is issued that results in an increase of the marina's potential boat occupancy rate, a dilution analysis be conducted to re-determine the prohibited closure area.

B.7.(g)

New item added. Provisionally excludes certain dry stack and fueling facilities from prohibited classifications and closure determinations.

C.

Section C. is replaced in its entirety to more clearly define harvesting, handling, and transportation operations requirements. The section provides shellfish harvesters and certified shippers more flexibility regarding bulk shellstock tagging. Additionally, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance temperature control options are included in the event that South Carolina growing areas are shown to be adversely affected by specific naturally occurring *Vibrio sp.* pathogens. Also included is a requirement for certified shippers to initiate shellstock temperature management within two hours of receiving shellstock. This item was carefully crafted in order to provide maximum flexibility for the shellfish industry. Additionally, Section C provides much needed flexibility for existing transportation temperature requirements by combining and incorporating the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance guidance for shipping times and shipment acceptability. An additional item requiring marine sanitation devices or portable toilets to be included on commercial shellfish harvest vessels equipped with mechanical harvesting equipment has been included. These larger vessels typically employ multiple workers and are often away from shore facilities for long periods of time due to their ability to harvest during any tidal stage.

D.1.(a)

Amended for stylistic consistency.

D.1.(b)

Amended for stylistic consistency.

D.1.(c)

Amended to change reference from "seed (replanting)" to "South Carolina Department of Natural Resources planting credit". This amendment will not impact industry. In the past, planting or replanting operations were often called "seed" or "seeding" operations. Seed refers to juvenile shellfish intended for growth to market size. Planting credit operations often relay and plant shellfish that are already mature.

D.1.(d)

Amended for grammatical and stylistic consistency.

D.1.(e)

Amended to change reference from "seed (replanting)" to "planting credit."

- D.1.(f) Amended for stylistic consistency. Replaced "approval is granted" with "authorized" for readability.
- D.1.G. Amended for stylistic consistency.
- D.2. Amended for stylistic consistency.
- D.3. Amended for stylistic consistency and to update item reference.
- D.3.(a) Amended for stylistic consistency.
- D.3.(b) Amended to delete reference to "application form provided by the Department" and for stylistic consistency.
- D.3.(b)(4) Amended for stylistic consistency.
- D.3.(b)(4)(a) Item renumbered for stylistic consistency.
- D.3.(b)(4)(b) Item renumbered for stylistic consistency.
- D.3.(b)(4)(c) Item renumbered and amended for stylistic consistency.
- D.3.(b)(4)(iv) Item deleted. Duplicative requirement.
- D.3.(c) Amended to substitute "shall" in lieu of "will" and to replace “”successful” with “satisfactory.”
- D.3.(d) Amended to correct punctuation.
- D.3.(d)(1) Amended for stylistic consistency.
- D.3.(d)(1)(b) Amended to delete extra hyphen.
- D.3.(d)(1)(c) Amended for stylistic consistency.
- D.3.(d)(2) Amended for stylistic consistency.
- D.3.(d)(2)(b) Amended for stylistic consistency.
- D.3.(d)(2)(g) Amended for stylistic consistency.
- D.3.(d)(2)(h) Amended for stylistic consistency.
- D.3.(d)(3)(d) Amended for stylistic consistency.
- D.3.(d)(3)(e) Amended for punctuation and readability. Insert “21” in CFR reference and "Title" in official Code of Federal Register reference.
- D.3.(d)(3)(f) Amended for stylistic consistency.
- D.3.(d)(3)(h) Amended add hyphen for stylistic consistency.
- D.3.(d)(3)(h)(i) Amended for stylistic consistency.
- D.3.(d)(3)(i)(ii)

## 32 PROPOSED REGULATIONS

Amended for stylistic consistency.

### D.3.(d)(3)(j)(i)

Amended to specify that a water disinfection system shall be required for all recirculating wet storage systems. Also amended for stylistic consistency.

### D.3.(d)(3)(j)(iii)

Amended for stylistic consistency.

### D.3.(d)(3)(j)(iv)

Item was amended to update procedures related to UV light replacement and testing requirements for recirculating wet storage systems.

### D.3.(d)(3)(k)

Item deleted. Item is adequately addressed in Section G.

### D.3.(d)(3)(l)

Item deleted. Item is adequately addressed in Section G.

### D.4.

Amended for stylistic consistency.

### D.5.

New item added. Allows the Department, in limited instances and upon request from a State agency having shellfish regulatory authority, to authorize the translocation of shellfish beds within prohibited growing areas for purposes of marine habitat preservation.

### E.1.

Amended to allow samples to be taken for scientific examination for public health purposes. The type of test "shall" be included on the receipt. New language improves readability. Also amended for stylistic consistency.

### E.2.

Amended for stylistic consistency and to state that the Department "shall" use the referenced organisms and concentrations in determining bacteriological adulteration of shellfish.

### F.1.

Amended to reference a laboratory "authorized" by the Department, in lieu of "approved" by the Department, and to require that laboratories conform to requirements of Chapter III. Laboratory, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, (chapter) III. Laboratory.

### F.2.

Amended to require National Shellfish Sanitation Program microbiological methods, practices, and procedures.

### F.3.

Item amended in its entirety. Item is codified following sub-items (see below).

### F.3.(a)

New sub-item added for methods codification.

### F.3.(a)(1)

New sub-item specifies existing AOAC and APHA methods be used.

### F.3.(a)(2)

New requirement specifying physical and chemical measurements be expressed in standard units.

### F.3.(b)

New sub-item allows use of EPA methods when AOAC and APHA methods are not available.

### F.4.

New item "Biotoxin" added.

### F.4.(a)

New sub-item specified AOAC and APHA methods for paralytic shellfish poisoning bioassay.

### F.4.(b)

New sub-item specifies current APHA method for *Karenia brevis* toxin bioassay

### G.

Section is replaced in its entirety to more clearly define certification and permitting procedures/requirements. The section does not place any additional substantive requirements upon industry. The section



includes new items that address National Shellfish Sanitation Program certified shipper facility minimum inspection frequencies and allowable operational deficiencies. The section also provides clearer requirements for in-state shellfish sellers (vendors) that operate without Department certification. The section recognizes (allows) interstate transport of shellfish by common carriers hired by certified shippers. The section also recognizes shellfish sales by persons operating under the authority of R.61-25, Retail Food Establishments.

H.

Section is replaced and amended in its entirety to more clearly define compliance and inspection requirements and procedures. A new section item references using specific chapters of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance to identify certified shipper compliance inspection item deficiency levels. Deficiency levels are coded as critical, key, or other. These deficiency levels are currently being used to determine certification compliance but have not been specifically identified within the current existing regulation. The section also updates and amends permit and certificate suspension/revocation and appeal process (S.C. Title 44; S.C. Title 1).

I.

Section is revised in its entirety to incorporate, by reference, portions of Chapter X. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section I. is the general section for all certified shipper facilities. The Chapter X. reference provides National Shellfish Sanitation Program Hazard Analysis Critical Control Point (HACCP), general sanitation, other model ordinance, post harvest process labeling, and shipping documents and records requirements. The section also lists several major compliance items as well as an intermediate processing plan requirement for those certified shippers that receive shellstock in bulk.

J.

Section is revised in its entirety to incorporate, by reference, Chapter XI. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section J. provides requirements for shucker-packers; a primary certified shipper category. The Chapter XI reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels. The section also includes a requirement heat shock, a shucking methodology having the potential to contaminate oysters, be conducted in accordance with a scheduled heat shock process authorized by the Department.

K.

Section is revised in its entirety to incorporate, by reference, Chapter XII. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section K. provides requirements for repackers; a primary certified shipper category. The Chapter XII reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

L.

Section is revised in its entirety to incorporate, by reference, Chapter XIII. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section L. provides requirements for shellstock-shippers; a primary certified shipper category. The Chapter XIII reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

M.

Section is revised in its entirety to incorporate, by reference, Chapter XIV. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section M. provides requirements for reshippers; a primary certified shipper category. The Chapter XIV reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

N.

Section is revised in its entirety to incorporate, by reference, Chapter XV. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section N. provides requirements for depuration processors; a primary certified shipper category. The Chapter XV reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

### 34 PROPOSED REGULATIONS

- O.1.(a)(1)  
Amended for stylistic consistency and to exclude shellfish seed hatchery operations.
- O.1.(a)(2)  
Amended for stylistic consistency.
- O.1.(b)  
Amended for stylistic consistency.
- O.1.(b)(1)  
Amended to delete "approved" verbiage.
- O.1.(b)(3)  
Amended for stylistic consistency
- O.1.(c)  
Amended for stylistic consistency.
- O.1.(c)(2)  
Amended for stylistic consistency.
- O.1.(f)  
Amended to exempt shellfish seed operations from water quality requirements (with specific provisions).
- O.1.(f)(1)  
New item added to allow prohibited area use for seed culture when sanctioned by the Department.
- O.1.(f)(2)  
New item requiring demonstration of acceptable levels of poisonous or deleterious substances.
- O.1.(f)(3)  
New item requiring Department authorization for relocation. Establishes six (6) month minimum culture time in approved waters.
- O.1.(g)  
Amended for stylistic consistency.
- O.1.(h)  
Amended for stylistic consistency.
- O.1.(i)  
Amended to replace "approved" with "authorized" and replace "USFDA" with "United States Food and Drug Administration."
- O.1.(j)(3)  
Amended to correct typographical error "inland" with "in land."
- O.2  
Amended for stylistic consistency.
- O.3.  
Amended for stylistic consistency and to delete specific section references and to specify that open water "aquaculture operations" comply with all applicable requirements of the regulation.
- O.4.  
Amended for stylistic consistency.
- O.4.(a)  
Amended for stylistic consistency.
- O.4.(a)(4)  
Amended to include operations plan requirement for source of shellfish, including seed.
- O.4.(a)(9)  
Amended for stylistic consistency.
- O.4.(a)(10)  
New item inserted. NSSP requirement for collection of shellfish microbial and chemical quality information.
- O4.(a)(11)  
New item inserted. NSSP requirement for data collection concerning quality of food produced for use in artificial harvest systems.
- O4.(a)(12).

Item renumbered.

O.4.(a)(13)

Item renumbered.

O.4.(b)(1)

Amended for stylistic consistency and to replace "approved" with "open" for clarity.

O.4.(b)(2)(a)

Amended for stylistic consistency.

O.4.(b)(2)(b)

Amended for stylistic consistency and to add "and" to include the following item as a requirement.

O.4.(b)(2)(c)

Amended to correct punctuation

O.4.(b)(3)(b)

Amended for stylistic consistency.

O.4.(c)(2)

Amended for stylistic consistency

O.4.(c)(3)

Amended for stylistic consistency.

O.5.

Amended for grammatical and stylistic consistency. Replace "requirements" with "provisions."

O.6.

Item deleted. Other items within the section address typical seed operations. Following items renumbered.

O.7

Section renumbered and amended for stylistic consistency.

O.7.(d)

Amended to include operations plan requirement for source of shellfish, including seed.

P.2.

Amended to replace "shall" with "may."

**Notice of Staff Informational Forum and Public Comment Period:**

Staff of the Department of Health and Environmental Control invites members of the public and regulated community to attend a staff-conducted informational forum to be held on November 28, 2007 from 6:00 p.m. until 9:00 p.m. in the auditorium of the Marine Resources Research Institute laboratory building, 217 Ft. Johnson Road, Charleston (James Island), South Carolina. The purpose of the forum is to answer questions, clarify issues, and receive comments from interested parties on the proposed regulation.

Interested parties are also provided an opportunity to submit written comments to the staff forum by writing to Chuck Gorman at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, Fax number (803) 898-2893. To be considered, written comments submitted must be received no later than 9:00 p.m. on November 28, 2007.

Comments received at the forum and during the public comment period shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled for January 10, 2008. Comments received at the Forum and during the public comment period by the deadline date shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing as noticed below.

Copies of the text of the proposed amendment to the regulation for public notice and comment may be obtained by contacting Chuck Gorman at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-3112, Fax number (803) 898-2893, or from the Department's website at [www.scdhec.gov/administration/regs](http://www.scdhec.gov/administration/regs). At this website, click

## 36 PROPOSED REGULATIONS

on the SCDHEC Regulation Development Update; choose the Water Category and scan for this proposed regulation.

### **Notice of Board Public Hearing and Opportunity for Public Comment:**

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on January 10, 2008. The public hearing will be held in the Board Room of the Commissioner's Suite, third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull St., Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The Department will publish the Board's agenda 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

### **Preliminary Fiscal Impact Statement:**

The proposed amendments will more clearly define requirements for harvesters, processors, and transporters of shellfish thereby limiting economic impact. No fees are associated with these proposed amendments.

### **Statement of Need and Reasonableness:**

This statement was developed by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-47, Shellfish

Purpose: The Department is proposing to amend R.61-47 in order to: revise the Regulation to bring it up to date with current National Shellfish Sanitation Program guidance and practices; include a section on severability; update and expand definitions; update certification and permitting procedures; update growing area survey and classification standard references; update requirements for the harvesting, handling and transportation of shellfish; update compliance and inspection procedures; update certified shipper facility and aquaculture requirements; and revise style, language, and grammar for clarity, readability and consistency.

Legal Authority: S.C. Code Section 44-1-140 (1976 Code of Laws, as amended).

Plan for Implementation: These revisions will be incorporated into R.61-47 upon approval by the Board of Health and Environmental Control, the General Assembly, and publication in the S.C. State Register. These amendments will be implemented in the same manner in which the existing regulations are implemented.

### **DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:**

The proposed amendment is needed and reasonable because it will incorporate National Shellfish Sanitation Program minimum guidance criteria that have been implemented since the last revision. Regulatory adoption of National Shellfish Sanitation Program minimum guidance criteria and standards is necessary to ensure a high degree of public health protection for consumers of molluscan shellfish. State and industry compliance with these minimum criteria and standards ensures that South Carolina molluscan shellfish products processed and transported in accordance with the proposed amendment are acceptable for interstate commerce.

The proposed amendment is needed and reasonable because it provides clearer guidance and enhanced flexibility for the shellfish industry.

The proposed amendment is needed and reasonable in order to correct minor regulatory inconsistencies and provide stylistic consistency, better readability and clarity.

DETERMINATION OF COSTS AND BENEFITS:

This amendment will affect consumers, harvesters, processors and transporters of shellfish. The proposed amendment protects the shellfish industry through the implementation of established national standards and guidance criteria. Compliance with these standards, established by the Interstate Shellfish Sanitation Conference and implemented through the United States Food and Drug Administration's National Shellfish Sanitation Program, is required for South Carolina shellfish products to be accepted in interstate commerce. The proposed amendments will more clearly define requirements for harvesters, processors, and transporters of shellfish and help to assure that South Carolina shellfish products continued to be accepted in interstate commerce. No fees are associated with these proposed amendments.

UNCERTAINTIES OF ESTIMATES:

Because this is an amendment of an existing regulation, the Department can be reasonably certain on the (lack of) associated costs.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed amendment protects the health of consumers of shellfish as well as the health of shellfish resources. Additionally, the regulation functions in concert with other Department environmental and health programs and ensures consistency with Department regulations.

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

Without this amendment, Shellfish Sanitation Program compliance with National Shellfish Sanitation Program public health guidance criteria cannot be assured.

**Statement of Rationale:**

Department staff determined during its review of R.61-47 that it was appropriate to revise the regulation. R.61-47 was last amended in 2007. Since that time, several changes in best practices and standards have occurred. See the Statement of Need and Reasonableness above for more information regarding the factors influencing the decision to revise the regulation.

**Text:**

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

## 38 PROPOSED REGULATIONS

Document No. 3162

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-140; 48-1-30; and 44-87-10 *et seq.*

R.61-86.1. Standards of Performance for Asbestos Projects.

#### **Preamble:**

The Department proposes to amend Regulation 61-86.1, *Standards of Performance for Asbestos Projects*, to update and clarify portions of the regulation to be consistent with the Federal Regulation where applicable, clarify certain sections of the regulation to improve compliance rates, and reorganize parts of the regulation to be more user-friendly. Further, language in the regulation will be updated to correlate with changes in the administrative appeals process pursuant to South Carolina Act 387.

The proposed amendments to Regulation 61-86.1, *Standards of Performance for Asbestos Projects*, will require legislative review.

A Notice of Drafting for these proposed changes was published in the *State Register* on June 23, 2006. A second Notice of Drafting was published in the *State Register* on May 25, 2007 to extend the public comment period.

#### **Section-by-Section Summary of Proposed Revisions:**

<u>SECTION CITATION:</u>	<u>EXPLANATION OF CHANGE:</u>
Section I.	For the definition of "Aggressive clearance sampling": added "(s)" to blower.
Section I.	For the definition of "AHERA": added "Regulations developed pursuant to the" and "(October 30, 1987)".
Section I.	For the definition of "Airlock": added "comma (,)" after "contaminated areas"; removed "further" after "thereby"; and added "further" after contamination.
Section I.	For the definition of "Amended water": added "(for example, a non-sudsing detergent)".
Section I.	For the definition of "Area air sampling": added "regulated".
Section I.	For the definition of "Asbestos abatement entity": added comma "(,)" after "concern" and "religious"; removed "who"; and added "that".
Section I.	For the definition of "Asbestos project": removed "or other disturbance of regulated asbestos-containing materials (RACM). This also includes demolition of a regulated facility." and added "encapsulation, enclosure, renovation, repair, removal, any disturbance of regulated asbestos containing materials (RACM), and demolition of a regulated facility."

- Section I. For the definition of “Asbestos project design”: removed “,which” and replaced with “that”.
- Section I. For the definition of “Asbestos containing material (ACM)”: removed “1”; added “one”; added “(1%)”; and added “(NOTE: “Appendix A to Subpart F” has been redesignated as, and shall hereinafter be referred to as, “Appendix E to Subpart E” - 60 FR 31917, June 19, 1995.)”.
- Section I. For the definition of “Asbestos training course provider”: added “of this regulation”; removed “specific”; and added “, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course”.
- Section I. For the definition of “Asbestos training course”: added “in any discipline listed herein (for example, workers, supervisors, management planners, etc.)”; removed “specific”; added “of this regulation and is acceptable for licensing purposes”; and removed “for qualification of an applicant seeking a license in any of the specific work practice topics or disciplines”.
- Section I. For the definition of “Asbestos training course instructor”: added hyphen “(-)” between “Department” and “approved”; removed “who meets the qualification requirements, as prescribed in Section XV of this regulation, for”; added “who will”; removed “ing” from “teaching”; removed “for teaching work practice or”; added “Department-approved”; removed “specific”; added “and/or” after “initial”; and added “and who meets the qualifications of this regulation”.
- Section I. For the definition of “ASHARA”: added “Regulations developed pursuant to 40 CFR Part 763, Subpart E, Appendix C Model Accreditation Plan,” and “(November 28, 1992)”.
- Section I. For the definition of “Building Inspection”: added “by a Department-licensed asbestos building inspector” and removed “asbestos-containing materials ( )”.
- Section I. For the definition of “Category I nonfriable asbestos containing material (ACM)”: added hyphen “(-)” between “asbestos” and “containing”; added “and” after “gaskets”; removed “more”; added “greater”; removed “1”; added “one”; added “(1%)”; removed “A” after “Appendix” and replaced with “E”; removed “F” after “Subpart” and replaced with “E”; and removed “Section 1”.

## 40 PROPOSED REGULATIONS

- Section I. For the definition of “Category II nonfriable ACM”: deleted comma “(,)” after “ACM”; added “and” after ACM; removed “more”; added “greater”; added “one”; removed “1”; added “(1%)”; removed “A” after “Appendix” and replaced with “E”; removed “F” after “Subpart” and replaced with “E”; and removed “Section 1”.
- Section I. For the definition of “Clean room”: “which” is removed and replaced with “that”; removed “with”; and added “and that has”.
- Section I. For the definition of “Commercial labor provider”: comma “(,)” added after corporation; added “that is”, removed “which”; and added “does”.
- Section I. Definition of “Consultant” removed. Category does not exist and is not licensed by the Asbestos Program.
- Section I. For the definition of “Contractor”: renumbered and removed “who”.
- Section I. For the definition of “Control measure”: renumbered and added comma “(,)” after “glove-bag”; deleted hyphen “(-)” between “glove” and “bag”.
- Section I. For the definition of “Critical barrier”: renumbered; added “At minimum, two independent layers of 6-mil plastic sheeting applied to any opening into a work area in a manner that creates a”; removed “A” and “applied from”; and added “switches, outlets”.
- Section I. Definition of “Cut” is renumbered.
- Section I. For the definition of “Decontamination enclosure system”: renumbered and “which” is removed and replaced with “that”; added comma “(,)” after “materials”.
- Section I. For the definition of “Demolition: renumbered and “or moving of a structure” is added.
- Section I. Definition of “Department” renumbered.
- Section I. Definition of “Electrical generating facility” renumbered.
- Section I. Definition of “Emergency operation” renumbered; added comma after “that” and after “to”.



- Section I. For the definition of “Encapsulation”: renumbered and “which” is removed and replaced with “that”.
- Section I. Definition of “Enclosure” renumbered.
- Section I. Definition of “EPA” renumbered.
- Section I. For the definition of “Equipment room”: renumbered; “which” is removed and replaced with “that”; and “with” is removed and replaced with “and that has”.
- Section I. Definition of “Examination date” added to replace existing definition of issue date.
- Section I. For the definition of “Friable”: removed “may be” and added can be or has been”.
- Section I. For the definition of “Friable asbestos containing material”: added comma “(,)” after that and dry; removed comma “(,)” after powder; removed “which”; removed “more”; added “greater”; removed “1”; added “one”; added “(1%)”; removed “A“ after Appendix and replaced with “E”; removed “F” after Subpart and replaced with “E”; removed “Section 1”.
- Section I. Definition of “Goose Neck” added in response to stakeholder request.
- Section I. Definition of “Glove-bag” renumbered and renamed “Glovebag” and changed all references to “glove-bag” to “glovebag.”
- Section I. Definition of “Grind” renumbered.
- Section I. For the definition of “HEPA filter”: renumbered and “which” is removed and replaced with “that”.
- Section I. Definition of “Homogeneous Area” using Asbestos Hazard Emergency Response Act (AHERA) definition added for clarification.
- Section I. Definition of “HVAC” renumbered and comma “(,)” added after ventilation.
- Section I. For the definition of “Industrial manufacturing facility”: renumbered; “which” is removed and replaced with “that”; comma “(,)” added after “39”; and “an” is added.
- Section I. Definition of “In poor condition” renumbered.
- Section I. Definition of “Installation” renumbered.

## 42 PROPOSED REGULATIONS

Section I.	New definition of “Issue date” added to replace old definition.
Section I.	Definition of “Leak-tight” renumbered and comma “(,)” added after solids.
Section I.	For the definition of “License”: renumbered and “which” is removed and replaced with “that”.
Section I.	Definition of “Long-term, in-house contractor” renumbered.
Section I.	Definition of “Management planner” renumbered.
Section I.	Definition of “Manometer” added for clarification.
Section I.	For the definition of “Minor project”: renumbered; “less” removed and replaced by “fewer” twice and “is” removed and replaced by “are” twice.
Section I.	For the definition of “Moveable object”: renumbered; “easily removed” replaced by “moved”; comma “(,)” added after “e.g.”.
Section I.	Definition of “Negative pressure differential equipment” renumbered.
Section I.	Definition of “NESHAP” renumbered.
Section I.	For the definition of “NESHAP project”: renumbered; “regulated asbestos containing material ( )” added; and “being” added.
Section I.	Definition of “NIOSH” renumbered.
Section I.	Definition of “Non-industrial facility” added to clarify that any public, institutional or governmental agency not meeting definition for industrial manufacturing or electrical generating facility is considered a non-industrial facility and can obtain an employee group license.
Section I.	For the definition of “Operation and maintenance activity”: renumbered; added “(O&M)”; removed “which”; changed “glove-bag” to “glovebag”; and replaced with “that” twice.
Section I.	Definition of “O&M Worker” added to clarify that an O&M worker can only be licensed under a group license.
Section I.	Definition of “OSHA” renumbered.

- Section I. Definition of “Owner/Operator” renumbered.
- Section I. For the definition of “Owner’s representative”: renumbered and “consultant” removed and replaced with “supervisor, management planner, project designer”.
- Section I. Definition of “Personal air sampling” renumbered.
- Section I. For the definition of “Planned renovation operations”: renumbered; comma “(,)” added after removed; and comma “(,)” removed after time.
- Section I. Definition of “Process date” replaced by more representative definition, “Issue Date”.
- Section I. Definition of “Project designer” renumbered.
- Section I. Definition of “Reciprocity” renumbered.
- Section I. Definition of “Regulated area” added for consistency with Occupational Safety and Health Administration (OSHA) standards.
- Section I. For the definition of “Regulated asbestos containing material (RACM)”: renumbered and added “drilling”.
- Section I. Definition of “Removal” renumbered.
- Section I. For the definition of “Renovation”: renumbered; removed comma “(,)” after facility and added hyphen “(-)” between load and supporting.
- Section I. For the definition of “Repair”: renumbered; added “Returning damaged asbestos-containing material to an undamaged condition or to an intact state so as to prevent fiber release.”; and removed “Procedure other than enclosure or encapsulation used to patch, cover, or otherwise restore damaged ACM asbestos-containing material other than enclosure or encapsulation”. This change was made per AHERA requirements.
- Section I. For the definition of “Resilient floor covering”: renumbered; removed “1”; added “one”; added “greater” to replace “more”; added “(1%)”; added “40 CFR Part 463,” before Appendix; removed “A” after Appendix and replaced with “E”; removed “F” after Subpart and replaced with “E”; and removed “40 CFR Part 463, Section 1” before polarized.
- Section I. Definition of “Roofing materials” removed. Proposed regulatory revision eliminates the section for roofing projects, thereby, eliminating the need for the definition

## 44 PROPOSED REGULATIONS

of roofing material. Roofing projects will be considered as outdoor removals.

- Section I. Definition of “Shower room” renumbered.
- Section I. For the definition of “Small project”: renumbered; “less” removed and replaced by “fewer” twice; “is” removed and replaced by “are to be” twice; and “than less” removed and replaced by “fewer”.
- Section I. Definition of “Start date” renumbered and a hyphen “(-)” has been placed between “Departmental” and “issued”.
- Section I. Definition of “Strip” renumbered.
- Section I. Definition of “Structural member” renumbered.
- Section I. Definition of “Structures per square millimeter” renumbered and “less” replaced by “fewer”.
- Section I. Definition of “Surfactant” renumbered.
- Section I. Definition of “Supervisor” renumbered.
- Section I. For the definition of “Temporary storage license”: renumbered; added “deemed”; replaced “to” with “by”; and removed “which” and replaced with “that”.
- Section I. For the definition of “Visible emissions”: renumbered; removed “which” and replaced with “that”; and removed “coming” and replaced with “that originate”.
- Section I. Definition of “Variance” added to clarify that a variance is written approval for alternative work practices at an asbestos project.
- Section I. Definition of “Waste generator” renumbered.
- Section I. Definition of “Waste shipment record” renumbered.
- Section I. For the definition of “Wet cleaning”: renumbered; removed “eliminating” and replaced with “removing”; added comma “(,)” after mops; and removed “which” and replaced with “that”.
- Section I. For the definition of “Work area”: renumbered; added comma “(,)” after spaces; and removed “which” and replaced with “that”.
- Section I. For the definition of “Worker”: renumbered and removed “However, facility operation and maintenance workers are not required to work under a licensed supervisor.”

Section I.	Definition of “Working day” renumbered.
Section II.A.	Added colon “(:)”; and and/or after owner; removed “consultant” and “or” before “worker”; added “non-industrial facility owner and/or operator, or”; added “activity” after “demolition”; and removed “to” before any asbestos”.
Section II.C & D.	Replaced with new wording in the form of language from the 1996 EPA residential clarification document to specify when a residential structure is regulated for consistency with existing EPA requirements.
Section III.	Renamed as ASBESTOS LICENSE FEE SCHEDULE. Places license fee information in one location and clarifies fee schedule.
Section III.A.	Added language to identify acceptable methods of fee payment and that each separate building at a multi-building site shall be considered a separate asbestos project, and fees will be assessed for each.
Section III.B.	Formerly SECTION III.D. Moved, renamed, and revised to specify personnel license fees. No fee amount has been changed as a result of these revisions.
Section III.C.	Formerly SECTION IV.I. Moved, renamed, and revised to specify renovation project fees. No fee amount has been changed as a result of these revisions
Section III.D.	Formerly SECTION XIII.G. Moved, renamed, and revised to specify demolition project fees. No fee amount has been changed as a result of these revisions
Section IV.	Renamed as PERSONNEL LICENSING REQUIREMENTS. Clarifies personnel license requirements. No fee amount has been changed as a result of these revisions.
Section IV.A.	Formerly SECTION III.A. Moved and revised to specify applicability of this section.
Section IV.B.	Formerly SECTION III.B.3. Moved, renamed and revised to specify training documentation requirements.
Section IV.C.	Formerly SECTION III.B. Moved and revised to specify license application requirements.
Section IV.C.2.g.	Formerly SECTION III.B.2.a. Moved and revised to specify contractor license requirements.
Section IV.C.2.h.	Added language concerning Non-Industrial Facility Group Licenses.

## 46 PROPOSED REGULATIONS

Section IV.D.	Formerly SECTION III.C. Moved and revised to specify continuing education requirements. Also, Section III.D. of the former version of the regulation, which was moved to Section IV., has been stricken in its entirety.
Section IV.E.	Formerly SECTION III.E. Moved and revised to specify Department requirements of action on an application.
Section IV.F.	Formerly SECTION III.F. Moved and revised to specify requirements for Department denial of applications and licenses.
Section IV.G.	Formerly SECTION III.G. Moved to Section IV to specify the Department's right to impose terms and conditions in granting licenses.
Section IV.H.	Formerly SECTION III.H. Moved and revised to specify license duration requirements
Section V.	Renamed as ASBESTOS PROJECTS/GENERAL INFORMATION.
Section V.A.	Formerly SECTION IV.A. Moved and revised to specify applicability of this section.
Section V.B.	Formerly SECTION IV.B. Moved and revised to specify general requirements.
Section V.C.	Formerly SECTION IV.C. Moved and revised to specify other requirements at the project site.
Section V.D.	Formerly SECTION IV.D. Moved, renamed and revised to specify alternative work practices for any sized asbestos project.
Section V.E.	Formerly SECTION IV.E. Moved and revised to specify requirements for emergency operation.
Section VI.	Renamed as ASBESTOS BUILDING INSPECTION REQUIREMENTS.
Section VI.A.	Formerly SECTION IV.B.1. and IV.B.2. Moved and revised to specify the applicability of this section.
Section VI.B.	Formerly SECTION IV.B.3. Moved, renamed, and revised to specify asbestos inspection requirements.
Section VI.C.	Added to specify asbestos inspection report contents requirements.
Section VI.D.	Added to specify sampling requirements for building inspectors.

Section VII.	Renamed as STANDARDS FOR AIR SAMPLERS.
Section VII.A.	Added to specify applicability of this section.
Section VII.B.	Formerly SECTION IV.F. Moved, renamed and revised to specify general requirements.
Section VII.C.	Formerly SECTION V.C.1. Moved, renamed and revised to specify background monitoring requirements.
Section VII.D.	Formerly SECTION V.C.2. Moved, renamed and revised to specify daily monitoring requirements.
Section VII.E.	Formerly SECTION IV.F.4. Moved, renamed and revised to specify clearance monitoring requirements.
Section VII.E.3 - 7	Formerly found in SECTION V.C.3. Moved and revised to expound on clearance monitoring requirements.
Section VIII.	Renamed as DISPOSAL REQUIREMENTS. Clarifies disposal requirements for all sized abatement or demolition projects
Section VIII.A.	Added to specify applicability of this section.
Section VIII.B.	Formerly SECTION IV.H. Moved, renamed and revised to specify general requirements.
Section VIII.C.	Added to specify temporary asbestos storage containment area site requirements.
Section IX.	Formerly SECTION IV.G. Renamed as EXEMPTION FROM WETTING FOR ANY SIZED PROJECT.
Section IX.A.	Renamed as General Provisions.
Section IX.B.	Renamed as Temperature Constraints.
Section X.	Renamed as NESHAP Projects.
Section X.A & B.	Formerly SECTIONS V.A. and V.B., respectively. Moved and revised to specify applicability of this section and notification/application requirements, respectively.
Section X.C.	Formerly SECTION V.D. Moved and revised to specify work practice requirements.
Section X.D.	Formerly SECTION V.C. Moved and revised to specify air sampling and analysis procedures.
Section XI.	SECTION XI. ROOFING PROJECTS removed in its entirety. Replaced and renamed as SECTION XI. SMALL PROJECTS.

## 48 PROPOSED REGULATIONS

Section XI.	Renamed as SMALL PROJECTS. Formerly known as SECTION VI, Moved and revised to specify requirements for small projects.
Section XII.	Renamed as MINOR PROJECTS. Formerly SECTION VII.
Section XII.A - D.	Formerly SECTIONS VII.A. through VII.D. Moved and revised to specify requirements for minor projects.
Section XIII.	Renamed as OPERATION AND MAINTENANCE activities. Formerly SECTION VIII. Moved and revised to specify operation and maintenance activity requirements
Section XIV.	Renamed as GLOVE-BAG TECHNIQUE. Formerly Section IX. Moved and revised to specify requirements for the use of glovebags and/or gloveboxes.
Section XIV.D. - E.	Added to specify requirements for negative pressure glovebag and glovebox systems.
Section XV.	Renamed as NON-FRIABLE PROJECTS. Formerly SECTION XIV. Moved and revised to specify requirements for non-friable projects.
Section XVI.	Renamed as STANDARD FOR DEMOLITIONS. Formerly SECTION XIII. Moved and revised to specify requirements for demolitions.
Section XVII.	Renamed as OUTDOOR PROJECTS. Formerly SECTION X. Moved and revised to specify requirements for outdoor projects.
Section XVIII.	Renamed as ENCAPSULATION AND ENCLOSURE. Formerly SECTION XII. Moved and revised to specify encapsulation and enclosure requirements.
Section XIX.	Renamed as REQUIREMENTS FOR TRAINING COURSES, INSTRUCTORS, AND TRAINING PROVIDERS. Formerly SECTION XV for paragraph B through J. Moved and revised to specify training and instructor requirements.
Section XIX.A	Formerly SECTIONS III.B.2.i., III.A.6., III.A.7., III.B.2.i.(3), III.A.8., and III.A.9., respectively. Moved and revised to specify asbestos training course license requirements.
Section XIX.K.	Formerly SECTION III.D.7. Moved and revised to specify training course fee schedules.



- Section XX. Formerly SECTION XVI. Moved and revised to specify industrial manufacturing and electrical generating facilities requirements.
- Section XXI. Formerly SECTION XVII. Moved and revised with phrase “submission of fraudulent information or documentation” and to add in a comma “(,)” after “limited to”.
- Section XXII. Formerly SECTION XVIII. Moved and revised due to change in Department’s appeal process.
- Section XXIII. Formerly SECTION XIX. Moved and revised for clarification.
- Section XXIV. Formerly SECTION XX. Moved and revised with minor grammatical correction.
- Section XXV. Formerly SECTION XXI. Moved and revised with only a numerical correction.

**Notice of Staff Informational Forum and Public Comment Period:**

Staff of the South Carolina Department of Health and Environmental Control invites interested members of the public to attend a staff-conducted informational forum to be held on November 26, 2007 at 10:00 a.m. in room 2380 at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to answer questions, clarify any issues, and receive comments from interested persons on the proposed amendments to Regulation 61-86.1, *Standards of Performance for Asbestos Projects*.

Interested persons are also provided an opportunity to submit written comments to Anthony T. Lofton at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on November 27, 2007. Comments received at the forum and during the public comment period noticed above will be considered by the staff in formulating the final proposed regulation for public hearing before the Board as noticed below.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Anthony T. Lofton at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-7217. Copies may also be obtained electronically on the Department’s Regulatory Information website at <http://www.scdhec.gov/administration/regs/> . At this site, click on the DHEC Regulation Development Update, choose the Air Quality category, and scan for the proposed amendments of R.61-86.1.

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

## 50 PROPOSED REGULATIONS

### **Notice of Public Hearing and Opportunity for Public Comment:**

Interested members of the public and regulated community are invited to comment on the proposed amendments to Regulation 61-86.1, *Standards of Performance for Asbestos Projects*, at a public hearing to be conducted by the Board of the South Carolina Department of Health and Environmental Control at its regularly-scheduled meeting on October 11, 2007. The public hearing is to be held in room 3420 (Board Room) of the Commissioner's Suite, third floor, Aycock Building of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department twenty-four hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

### **Preliminary Fiscal Impact Statement:**

Existing staff and resources will be utilized to implement the amendments to this regulation.

### **Statement of Need and Reasonableness:**

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

DESCRIPTION OF REGULATION: Amendments to Regulation 61-86.1, *Standards of Performance for Asbestos Projects*.

*Purpose of Regulation:* These amendments will result in clarification of many sections of the regulations, making them more specific, better organized, the regulation's intent more clear, ensure compliance and maintain conformity with Federal requirements and standards, give purpose and scope to the rest of the regulation, clarify certain sections of the regulation to improve compliance rates, and reorganize parts of the regulation to be more user-friendly.

*Legal Authority:* The legal authority for Regulation 61-86.1, *Standards of Performance for Asbestos Projects*, is S.C. Code Sections 44-1-140; 48-1-30; and 44-87-10 *et seq.* of the 1976 South Carolina Code of Laws, as Amended.

*Plan for Implementation:* The proposed amendments will take effect upon approval by the Board of the South Carolina Department of Health and Environmental Control, publication in the *State Register*, and approval by the General Assembly. The amendments will be implemented in the same manner in which the existing regulation is implemented.

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

These amendments are necessary to update and clarify certain sections of the regulation to be consistent with the Federal Regulation where applicable, clarify certain sections of the regulation to improve compliance rates, and to reorganize parts of the regulation to be more user friendly. Further, language in the regulation will be updated to correlate with changes in the administrative appeals process pursuant to South Carolina Act 387.

### **DETERMINATION OF COSTS AND BENEFITS:**

There will be no increased cost to the State or its political subdivisions as a result of these amendments. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal

law. The proposed amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties associated with the proposed amendments to R.61-86.1.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

It is expected that the proposed amendments to R.61-86.1 will improve the regulated community's understanding of the regulation's requirements, thereby, preventing exposure of the public and the environment to potentially dangerous asbestos containing materials, which may otherwise be removed and disposed of in an improper manner.

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

Licensing of demolition projects helps ensure that asbestos containing materials identified prior to demolition are handled and disposed of properly and that the projects are conducted in accordance with the requirements of the asbestos regulations. Training Providers are audited to ensure that the course material and curriculum meet specific criteria and that individual instructors are currently qualified to administer mandatory training to asbestos abatement personnel in each work practice topic or discipline. Lack of a clear, well organized regulation could result in an increase in non-compliance.

**Statement of Rationale:**

These revisions are proposed to provide additional clarity and specificity to the existing regulations. The Department found that it was necessary to amend Regulation 61-86.1, *Standards of Performance for Asbestos Projects*, which was last updated on June 28, 2002, in order to clarify many parts of the regulation that members of the regulated community found to be ambiguous. The Department found that parts of the regulation needed to be removed or updated because they could be misinterpreted or had become unnecessary in some cases. The Department also found that parts of the regulation needed to be reorganized to make information easier to locate for those using the regulation. Because the regulation was being revised, the Department took the opportunity to also add the required language related to the recently changed appeals process.

The revisions are based on staff judgment and stakeholder comments and address questions from the regulated community regarding particular sections of the existing regulations.

**Text:**

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

## 52 PROPOSED REGULATIONS

Document No. 3161  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTER 61  
Statutory Authority: 1976 Code Section 48-1-10 et seq.

### R.61-68. Water Classifications and Standards

#### **Preamble:**

The Department proposes amendment of R.61-68 to strengthen and improve the existing regulation and make appropriate revisions of the State's water quality standards in accordance with Section 303(c)(2)(B) of the Federal Clean Water Act (CWA). Section 303(c)(2)(B) requires that South Carolina's water quality standards be reviewed and revised, where necessary, at least every three years for the purposes of considering the Environmental Protection Agency's (EPA) most recently published numeric and narrative criteria and to comply with recent Federal regulatory revisions and recommendations. The Department has also included two revisions that will improve the regulation. R.61-68 also includes revisions due to recodification of additional language from the proposed text changes so that every section, subsection, item, and subitem could be cited correctly. See also the Statement of Need and Reasonableness herein. The proposed amendment will be submitted to the General Assembly for review.

The Notice of Drafting for this proposed amendment was published in the *State Register* on January 26, 2007. A second notice extending the drafting comment period was published on May 25, 2007.

#### **Discussion of Proposed Amendments for Public Comment:**

Note: The sections cited in this listing mirror the revised outline in the text of the regulation amendments.

#### **(1): Adoption of federal toxics criteria to reflect the most current final published criteria according to Sections 304(a) and 307(a) of the Clean Water Act.**

##### **Section Citation and Explanation of Change**

###### R.61-68 Appendix

The proposed changes to R.61-68 relating to human health and aquatic life criteria are reasonable because the stated criteria in the amendment are based on sound scientific principles and are required in order to comply with the goals of Section 101(a)(2) and 303(c) of the CWA for protection and maintenance of the uses of the waters of the State. These changes incorporate scientific advances in areas of cancer and non cancer risk assessments and the EPA's 2000 methodology for deriving human health water quality criteria and supercede criteria for the fifteen affected pollutants and inclusion of newly published aquatic life ambient water quality criteria for two non-priority pollutants. A number of the Maximum Contaminant Levels (MCLs) associated with the Disinfection Byproducts Rule have been incorporated. Additionally, the minerals manganese and iron were removed from the non-priority pollutant table due to issues with background concentrations associated with these two parameters. Further, the arsenic criterion for human health will now reflect only the MCL due to issues with the federally-derived 307(a) criterion in concurrence with EPA.

#### **(2): Revision of the assessment of the bacteriological indicator for protection of recreational uses and revisions to the enterococci standard and implementation.**

##### **Section Citation and Explanation of Change**

###### R.61-68.E.14.c.9.

Removed language that was disapproved by the EPA during the last regulation review. Also added language to allow NPDES permits to implement the change to the enterococci standard to allow a 10% exceedence of the single sample maximum value in waters not impaired for enterococci.

R.61-68.E.14.d.6.

Added language to reflect the assessment methodology for 303(d) listing used by the Department.

R.61-68.G.11.f.

Added language to reflect the addition of 10% exceedence of the single sample maximum for enterococci.

R.61-68.G.12.f.

Added language to reflect the addition of 10% exceedence of the single sample maximum for enterococci.

R.61-68.G.13.f.

Added language to reflect the addition of 10% exceedence of the single sample maximum for enterococci.

**(3): Inclusion of a definition of practical quantitation limit (PQL).**

**Section Citation and Explanation of Change**

R.61-68.B.46.

Added a definition for practical quantitation limit.

**(4): Revisions to the regulatory language regarding NPDES permitting and protection of surface waters for drinking water purposes.**

**Section Citation and Explanation of Change**

R.61-68.C.10.a.

Removed language that prohibited mixing zones in source water protection areas.

**(5): Stylistic changes which may include corrections for: readability, grammar, punctuation, typography, codification, references, and language style.**

**Section Citation and Explanation of Change**

R.61-68.D.4.a.

Changed number to 0.10 to comply with state law.

R.61-68.D.4.b.

Changed number to 0.10 to comply with state law.

R.61-68.E.14.

Moved language to heading of Appendix for clarity.

R.61-68.E.14.c.10

Changed language for clarity.

R.61-68.E.17.d

Changed language for clarity.

R.61-68.G.10.h

Changed language for clarity.

## **54 PROPOSED REGULATIONS**

### **Notice of Staff Informational Forum and Public Comment:**

Staff of the Department of Health and Environmental Control invites members of the public and regulated community to attend a staff-conducted informational forum to be held on November 27, 2007, at 1:00 p.m. in Peoples Auditorium, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The purpose of the forum is to answer questions, clarify issues, and receive comments from interested parties on the proposed amendments of R.61-68.

Interested parties are also provided an opportunity to submit written comments to the staff forum by writing to Amy M. Bennett at Bureau of Water, South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina, 29201, Fax number (803) 898- 4140. To be considered, written comments submitted must be received no later than 5:00 p.m. on November 26, 2007. Comments received at the Forum and during the public comment period shall be considered by staff in formulating the final proposed draft for public hearing before the Department's Board as noticed below.

Copies of the text of the proposed amendment to the regulation for public notice and comment may be obtained by contacting Amy M. Bennett at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-4249, Fax number (803) 898-4140, or from the Department's website at <http://www.scdhec.gov/administration/regs/>. At this site click on the SCDHEC Regulation Development Update, click on the Water category, and scan down for the proposed amendments of R.61-68.

Comments received at the forum or during the write-in public comment period by the deadline noticed above shall be submitted to the Board of Health and Environmental Control in a Summary of Public Comments and Department Responses for consideration at the public hearing as noticed below.

### **Notice of Public Hearing and Opportunity for Public Comment:**

Interested members of the public and regulated community are invited to make oral and written comments on the proposed amendments of R. 61-68 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on January 10, 2008. The public hearing will be held in Room 3420 (Board Room) of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. Please use the front entrance to the building facing Bull Street. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record.

### **Preliminary Fiscal Impact Statement:**

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

### **Statement of Need and Reasonableness:**

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

DESCRIPTION OF REGULATION: Amendment of Regulation 61-68, Water Classifications and Standards.

Purpose: Proposed amendment of R.61-68 will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State's water quality standards in accordance with Section 303(c)(2)(B) of the Federal Clean Water Act (CWA).

Legal Authority: S.C. Code Sections 48-1-10 *et seq.*, implementing the CWA.

Plan for Implementation: The proposed amendment would be incorporated within R.61-68 upon approval of the General Assembly and publication in the State Register. The proposed amendment will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: This amendment is required to comply with Federal requirements of Section 303(c)(2)(B) of the CWA.

The adoption of federal toxics criteria to reflect the most current final published criteria according to Sections 304(a) and 307(a) of the CWA.

The proposed changes to R.61-68 relating to human health and aquatic life criteria are based on sound scientific principles and are required in order to comply with the goals of Section 101(a)(2) and 303(c) of the CWA for the protection and maintenance of the uses of the waters of the State. These proposed changes incorporate scientific advances in areas of cancer and non-cancer risk assessments published in EPA's latest methodology for deriving human health water quality criteria and supercede criteria for fifteen priority pollutants. The Department has also included some Maximum Contaminant Levels (MCLs) associated with the Disinfection Byproducts Rule. The Department proposes to adopt two newly published EPA aquatic life water quality criteria for non-priority pollutants and, additionally, the Department proposes to remove two minerals, manganese and iron, as non-priority pollutants due to issues with background concentrations associated with these two parameters.

**Revision of the assessment of the bacteriological indicator for protection of recreational uses and revisions to the enterococci standard and implementation.**

The proposed changes reflect the assessment methodology for recreational water currently used by the Department and approved by the EPA. Additionally, the assessment of enterococci bacteria in NPDES permits will be updated to incorporate an allowable 10% exceedence of the single sample maximum. This makes the standard consistent with the fecal coliform bacteriological indicator. The 10% exceedence will only be allowed in waters that are not impaired for enterococci.

**Inclusion of a definition of practical quantitation limit (PQL).**

South Carolina's current water quality standards do not include a definition of PQL. The Department utilizes the term PQL as it relates to water quality standards and NPDES permitting and believes that providing the definition as currently interpreted would be a beneficial and necessary inclusion for our state's water quality standards.

**Revision of the arsenic criteria.**

The proposed changes to R.61-68 relating to human health and aquatic life criteria are reasonable because the Department reviewed the underlying scientific basis for human health protection related to the arsenic criteria and found that due to uncertainties identified in the current risk assessment and the need for additional data, the EPA has decided to reevaluate the existing recommend human health criteria for arsenic. The Department proposes to use the current Maximum Contaminant Level (MCL) value of 10 µg/L as in interim value for the protection of human health. This criterion revision is consistent with the WQS Handbook and EPA's recommended interim approach while the criterion for arsenic is being reevaluated.

## 56 PROPOSED REGULATIONS

### Revisions to the regulatory language regarding NPDES permitting and protection of surface waters for drinking water purposes.

The proposed changes to R. 61-68 relating to protection of surface waters for drinking water purposes are reasonable because the Department reviewed the current language and found it overly restrictive and burdensome to the regulated community. The Department proposes to strike the language that prohibits mixing zones in source water protection so that the NPDES permitting program may have the discretion to make appropriate mixing zone and source water protection decisions during the permitting process without contradicting language in the standards.

**DETERMINATION OF COSTS AND BENEFITS:** Existing staff and resources will be utilized to implement this amendment to the regulation. No additional cost will be incurred by the State if the revisions are implemented and therefore, no additional State funding is being requested.

In reviewing the potential for significant economic impact of the proposed amendment, the Department specifically evaluated situations in which costs would most likely be incurred by the regulated community. These estimates addressed the specific revisions by issue after determining those of greatest potential impact. The Department found that the overall impact to the State's political subdivisions or the regulated community as a whole was not likely to be significant in that the existing narrative standards would have incurred similar cost or the fact that the design standards required under the amendment will be substantially consistent with the current guidelines and review guidelines utilized by the Department. Further, much of the proposed amendment, for which an estimated cost may be incurred by the regulated community at the time of permit issuance, are essential and necessary to protect and maintain the existing uses supported by the water quality standards and are, therefore, beyond the scope of cost analysis in that they provide the minimum level of protection for aquatic life and human health as required by the CWA.

**UNCERTAINTIES OF ESTIMATES:** Minimal to moderate.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:** Implementation of this amendment will not compromise the protection of the environment or the health and safety of the citizenry of the State. The amendment will promote and protect aquatic life and human health by the regulation of pollutants into waters of the State.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:** Failure by the Department to incorporate appropriately protective water quality standards in the regulation that are the basis for issuance of National Pollutant Discharge Elimination System (NPDES) permits, stormwater permits, wasteload and load allocations, groundwater remediation plans, and multiple other program areas will lead to contamination of the waters of the State with detrimental effects on the health of flora and fauna in the State as well as the citizens of South Carolina.

#### **Statement of Rationale:**

The statement of rationale was determined by staff analysis pursuant to S.C. Code Section 1-23-110(A)(3)(h).

The adoption of federal toxics criteria to reflect the most current final published criteria according to Sections 304(a) and 307(a) of the CWA contained in the proposed amendment of R.61-68 are requirements of the CWA and are necessary for compliance with EPA's recommendations for the triennial review of the water quality standards to ensure consistency with the CWA. The remaining issues are Department initiated and are necessary and essential to the water quality standards program in South Carolina and to the quality of the regulation itself. The changes to the enterococci water quality standard will ensure that water quality uses are maintained while allowing for a 10 % exceedence of the single sample maximum value for waters that are not impaired for enterococci. The changes to the enterococci recreational assessment methodology reflect the methodology



currently used by the Department. The changes to the source water protection language will ensure that the language in the standards does not contradict decisions made during the NPDES permitting process.

**Text:**

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

Document No. 3159  
**DEPARTMENT OF REVENUE**  
 CHAPTER 117  
 Statutory Authority: 1976 Code Section 12-4-320

R.117-307.3. Accommodation

**Preamble:**

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

It has been the longstanding position of the Department that in order for the exception to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode."

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

**Notice of Public Hearing and Opportunity for Public Comment:**

All comments concerning this proposal should be mailed to the following address by November 27, 2007: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Wednesday, March 12, 2008 at 10:00 a.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to amend SC Regulation 117-307.3 concerning the application of the sales and use tax to the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration and the exception for facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. .

## 58 PROPOSED REGULATIONS

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

### **Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

### **Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: Certain Facilities Not Subject to the Tax.

Purpose: To provide examples to assist taxpayers in understanding the exception from the sales tax on accommodations for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility. These examples represent the longstanding position of the Department with respect to this exception.

Legal Authority: Code Section 12-4-320

Plan for Implementation: The regulation will become effective upon approval by the General Assembly and publication in the State Register.

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

The proposal to amend this regulation is needed and reasonable since it represents longstanding position and it provides examples to assist taxpayers in understanding the exception for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility.

DETERMINATION OF COSTS AND BENEFITS

Promulgation of these regulations will not have an impact on state or local political subdivisions expenditures. While the regulation represents longstanding position of the department with respect to this exception, there will be a minimal increase to general fund collections as a result of the department maintaining a regulation that provides examples for retailers. Promulgation of the regulation will also benefit the State and taxpayers by reducing any taxpayer confusion as to the application of the exception.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None

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

None

**Statement of Rationale:**

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

**Text:**

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

Document No. 3164  
**DEPARTMENT OF REVENUE**  
 CHAPTER 117  
 Statutory Authority: 1976 Code Section 12-4-320

R.117-329. Communications Services

**Preamble:**

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

**Notice of Public Hearing and Opportunity for Public Comment:**

All comments concerning this proposal should be mailed to the following address by November 27, 2007: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214.

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Wednesday, January 9, 2008 at 10:00 a.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to amend SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The purpose of this regulation is to summarize longstanding Department opinion concerning the taxability of various communications services and to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers.

## **60 PROPOSED REGULATIONS**

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

### **Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

### **Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: Certain Facilities Not Subject to the Tax.

Purpose: To list as many examples of communication services as possible that the Department has held in the past as subject to the tax. The regulation represents longstanding Department positions concerning communications services.

Legal Authority: Code Section 12-4-320

Plan for Implementation: The regulation will become effective upon approval by the General Assembly and publication in the State Register.

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

The proposal amends SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The regulation is needed to provide a centralized regulation for taxpayers concerning the taxability of various communications services and to list as many examples of communication services as possible that the Department has held in the past as subject to the tax. The regulation is reasonable since it represents longstanding Department positions concerning communications services.

DETERMINATION OF COSTS AND BENEFITS

Promulgation of these regulations will not have an impact on state or local political subdivisions expenditures. While the regulation represents longstanding position of the department with respect to communications services, there will be a minimal increase to general fund collections as a result of the department maintaining a regulation that provides examples for retailers. Promulgation of the regulation will also benefit the State and taxpayers by reducing any taxpayer confusion as to the application of the sales and use tax on communications services.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None

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

None

**Statement of Rationale:**

The purpose of this regulation is to amend SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The regulation summarizes longstanding Department opinion concerning the taxability of various communication services and attempts to list as many communications services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers.

**Text:**

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

Document No. 3158  
**DEPARTMENT OF REVENUE**  
 CHAPTER 117  
 Statutory Authority: 1976 Code Section 12-4-320

R.117-304.1. Sales Tax

**Preamble:**

The South Carolina Department of Revenue is considering amending SC Regulation 117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality.

This regulation presently does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. In other words, the sale of tangible personal property by a State agency to another agency is not subject to the sales tax if the transferring agency is only reimbursed its costs and expenses in conveying the property and it paid the tax on its initial purchase of the property.

Code Section 12-36-910(B)(4) imposes the sales tax on the “fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer.” For example, if a manufacturer of an industrial cleaning solution uses the cleaning solution instead of selling it, the manufacturer is liable for the sales tax on the fair market value of the cleaning solution it manufactured and used.

The proposed amendment to SC Regulation 117-304.1 is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

**Notice of Public Hearing and Opportunity for Public Comment:**

All comments concerning this proposal should be mailed to the following address by November 27, 2007: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214.

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Thursday, January 17, 2008 at 10:00 a.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to amend SC Regulation

## 62 PROPOSED REGULATIONS

117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

### **Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

### **Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: Transfers Between Agencies and Between the State and its Political Subdivisions.

Purpose: To make a technical correction to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

Legal Authority: Code Section 12-4-320

Plan for Implementation: The regulation will become effective upon approval by the General Assembly and publication in the State Register.

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

The proposal to amend this regulation is needed and reasonable since its purpose is to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

DETERMINATION OF COSTS AND BENEFITS

Promulgation of these regulations will not have an impact on state or local political subdivisions expenditures. Promulgation of the regulation will also benefit the State by ensuring that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None

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

None

**Statement of Rationale:**

The purpose of amending SC Regulation 117-304.1 is to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

This regulation presently does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. Code Section 12-36-910(B)(4) imposes the sales tax on the “fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer.” The proposed amendment to SC Regulation 117-304.1 is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

**Text:**

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

Document No. 3163  
**DEPARTMENT OF REVENUE**  
 CHAPTER 117  
 Statutory Authority: 1976 Code Section 12-4-320

R.117-307 and R.117-307.1. Sales Tax

**Preamble:**

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

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

**Notice of Public Hearing and Opportunity for Public Comment:**

All comments concerning this proposal should be mailed to the following address by November 27, 2007: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214.

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Wednesday, March 12, 2008 at 2:00 p.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to amend SC Regulation 117-307 and SC Regulation 117-307.1 concerning the sales tax on accommodations and “additional guest

## 64 PROPOSED REGULATIONS

charges. The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

### **Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

### **Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: For 117-307: Hotels, Motels, and Similar Facilities; and for 117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

Purpose: To amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations.

Legal Authority: Code Section 12-4-320

Plan for Implementation: After approval by the General Assembly and publication in the State Register, the regulation would be effective on June 1, 2007 – the effective date of the 6% tax rate.

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

The proposal to amend SC Regulation 117-307 and SC Regulation 117-307.1 is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law. The regulation would be effective on June 1, 2007 – the effective date of the 6% tax rate.

DETERMINATION OF COSTS AND BENEFITS

Promulgation of these regulations will not have an impact on state or local political subdivisions expenditures. While these regulations are only changing the tax rate cited to the new 6% tax rate enacted by the General Assembly, there will be a minimal increase to general fund collections as a result of the department maintaining regulations that are up-to date and consistent with the law. Promulgation of these regulations will also benefit the State and taxpayers by reducing any taxpayer confusion that may result from having a published regulation that is in conflict with the law

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None



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

None

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. The proposal to amend SC Regulation 117-307 and SC Regulation 117-307.1 is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend SC Regulation 117-307 and SC Regulation 117-307.1 is also reasonable in that it is the department’s responsibility to maintain regulations that are up-to date and consistent with the law. The regulation would be effective on June 1, 2007 – the effective date of the 6% tax rate.

Text:

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

Document No. 3166  
DEPARTMENT OF TRANSPORTATION  
CHAPTER 63  
Statutory Authority: 1976 Code Section 57-1-360

R.63-20. SCDOT Chief Internal Auditor

Preamble:

The South Carolina Department of Transportation proposes to promulgate a new regulation numbered 63-20 setting forth the mission, functions, responsibilities, authorizations and standards of the Chief Internal Auditor.

A Notice of Drafting for the proposed regulation was published in the State Register on July 27, 2007.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-20(A)	This section defines the mission and functions of SCDOT’s Chief Internal Auditor.
63-20(B)	This section requires that the Chief Internal Auditor report directly to the SCDOT Commission.
63-20(C)	This section defines the responsibilities of the Chief Internal Auditor.
63-20(D)-(E)	These sections define the authority of the Chief Internal Auditor.
63-20(F)	This section provides that the Chief Internal Auditor will meet or exceed the <i>Government Auditing Standards</i> issued by the United States Government Accountability Office.

## 66 PROPOSED REGULATIONS

### Notice of Public Hearing and Opportunity for Public Comment:

Should a public hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws, as amended, such a hearing will be conducted at 955 Park Street, Columbia, South Carolina, on December 3, 2007. Written comments or requests for a hearing may be directed to Deborah Brooks Durden, Assistant Chief Counsel, Post Office Box 191, Columbia, South Carolina 29202. To be considered, comments should be received no later than November 26, 2007.

### Preliminary Fiscal Impact Statement:

The costs associated with the office and duties described in this regulation are required by Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

### Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION 63-20. SCDOT Chief Internal Auditor.

Purpose of amendment: The purpose of the regulations is to set forth the mission, functions, responsibilities, authorizations and standards of the Chief Internal Auditor.

Legal Authority: The legal authority for regulation 63-20 is Section 57-1-360, SC Code of Laws and Section 8 of Act 114 of 2007.

Plan for Implementation: The promulgation of 63-20 will have a minimal effect on the practices of SCDOT. It will serve to notify the public of the procedures already being implemented as required by Act 114 of 2007.

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

The proposed regulation will benefit the public by establishing in regulation the duties and authority of the SCDOT Chief Internal Auditor.

**DETERMINATION OF COSTS AND BENEFITS:** The costs associated with the duties described in the regulation are required pursuant to Act 114 of 2007. There will be no additional costs to the state imposed by the promulgation of this regulation.

**UNCERTAINTIES OF ESTIMATES:** None.

**EFFECT ON ENVIRONMENTAL AND PUBLIC HEALTH:** None.

**DETRIMENTAL EFFECTS ON ENVIRONMENTAL AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:** None.

### Statement of Rationale:

The purpose of this regulation is to set forth the mission, functions, responsibilities, authorizations and standards of the Chief Internal Auditor of the South Carolina Department of Transportation. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

**Text:**

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

Document No. 3167  
**DEPARTMENT OF TRANSPORTATION**  
 CHAPTER 63  
 Statutory Authority: 1976 Code Section 57-1-370

R.63-30. SCDOT Commission Approval of Actions

**Preamble:**

The South Carolina Department of Transportation proposes to promulgate a new regulation numbered 63-30 setting forth the procedure for Commission review and approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction of projects under ten million dollars as required by Act 114 of 2007. The regulations establish the objective and quantifiable standards to be applied to certify that any actions approved are needed and the delegation of authority to professional staff to make such certifications for installation of new signals and curb cuts on primary routes.

A Notice of Drafting for the proposed regulation was published in the State Register on July 27, 2007.  
 Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-30A	This subsection defines terms used in the regulations.
63-30B	This subsection describes the procedure by which requests for resurfacing may be approved by SCDOT.
63-30C	This subsection describes how requests for installation of new traffic control signals may be approved by SCDOT.
63-30D	This subsection describes how requests for curb cuts on primary routes in the state highway system may be approved by SCDOT.
63-30E	This subsection describes how requests for bike lanes may be approved by SCDOT.
63-30F	This subsection describes how construction projects under ten million dollars may be approved by SCDOT.
63-30G	This subsection provides for reports to the Commission to be made by the Secretary of Transportation related to actions approved pursuant to this regulation.

**Notice of Public Hearing and Opportunity for Public Comment:**

Should a public hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws, as amended, such a hearing will be conducted at 955 Park Street, Columbia, South Carolina, on December 3, 2007. Written comments or requests for a hearing may be directed to Deborah Brooks Durden, Assistant Chief Counsel, Post

## 68 PROPOSED REGULATIONS

Office Box 191, Columbia, South Carolina 29202. To be considered, comments should be received no later than November 26, 2007.

### **Preliminary Fiscal Impact Statement:**

The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

### **Statement of Need and Reasonableness:**

#### DESCRIPTION OF REGULATION 63-30. Commission Approval of Actions

Purpose: SCDOT proposes to promulgate a new regulation numbered 63-30 setting forth the procedure for Commission review and approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction of projects under ten million dollars as required by Act 114 of 2007. The regulations establish the objective and quantifiable standards to be applied to certify that any actions approved are needed and the delegation of authority to professional staff to make such certifications for installation of new signals and curb cuts on primary routes.

Legal Authority: The legal authority for regulation 63-30 is section 57-1-370, SC Code of Laws and Section 8 of Act 114 of 2007.

Plan for Implementation: The promulgation of 63-30 will have a minimal effect on the practices of SCDOT. It will serve to notify the public of the procedures already being implemented as required by Act 114 of 2007.

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

The proposed regulation will benefit the public by creating a regulatory process for SCDOT Commission approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes and construction of projects under ten million dollars. The regulation will establish the objective and quantifiable standards to be applied in determining whether to approve or deny such requests and establish a procedure for applying those standards so that requests can be addressed in a timely manner.

DETERMINATION OF COSTS AND BENEFITS: The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. There will be no additional costs to the state imposed by the promulgation of this regulation.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENTAL AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECTS ON ENVIRONMENTAL AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: None.

### **Statement of Rationale:**

The purpose of this regulation is to set forth the procedure for Commission review and approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction of projects under ten million dollars. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

**Text:**

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

Document No. 3168  
**DEPARTMENT OF TRANSPORTATION**  
 CHAPTER 63  
 Statutory Authority: 1976 Code Section 57-1-460-470 and 56-5-1620

R.63-100. SCDOT Secretary of Transportation Approval of Actions

**Preamble:**

The South Carolina Department of Transportation proposes to promulgate a new regulation numbered 63-100 setting forth the procedure for Secretary of Transportation approval of requests for routine operation and maintenance and emergency repairs as required by Act 114 of 2007. The regulations establish the objective and quantifiable standards to be applied by the Commission in making its findings as to whether requests approved by the Secretary meet the needs of the public.

A Notice of Drafting for the proposed regulation was published in the State Register on July 27, 2007.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-100A	This subsection defines terms used in the regulation.
63-100B	This subsection describes the procedure for approval of requests for routine operation and maintenance by SCDOT and reports that will be made to the commission regarding those requests.
63-100C	This subsection describes the process for expedited award of emergency contracts by SCDOT.

**Notice of Public Hearing and Opportunity for Public Comment:**

Should a public hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws, as amended, such a hearing will be conducted at 955 Park Street, Columbia, South Carolina, on December 3, 2007. Written comments or requests for a hearing may be directed to Deborah Brooks Durden, Assistant Chief Counsel, Post Office Box 191, Columbia, South Carolina 29202. To be considered, comments should be received no later than November 26, 2007.

**Preliminary Fiscal Impact Statement:**

The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION 63-100. Secretary of Transportation Approval of Actions

## 70 PROPOSED REGULATIONS

Purpose: The purpose of the regulations is to set forth the procedure for Secretary of Transportation approval of requests for routine operation and maintenance and emergency repairs as required by Act 114 of 2007, and to establish the objective and quantifiable standards to be applied by the Commission in making its findings as to whether requests approved by the Secretary meet the needs of the public.

Legal Authority: The legal authority for regulation 63-100 is section 57-1-460-470 and 57-5-1620, SC Code of Laws and Section 8 of Act 114 of 2007.

Plan for Implementation: The promulgation of 63-100 will have a minimal effect on the practices of SCDOT. It will serve to notify the public of the procedures already being implemented as required by Act 114 of 2007.

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

The proposed regulation will benefit the public by creating a regulatory process for the Secretary of Transportation to approve and report upon requests for routine operation and maintenance and emergency repairs needed for existing roads and bridges. The regulation will also establish the objective and quantifiable standards to be applied by the Commission in making findings as to whether requests approved by the Secretary meet the needs of the public.

**DETERMINATION OF COSTS AND BENEFITS:** The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. There will be no additional costs to the state imposed by the promulgation of this regulation.

**UNCERTAINTIES OF ESTIMATES:** None.

**EFFECT ON ENVIRONMENTAL AND PUBLIC HEALTH:** None.

**DETRIMENTAL EFFECTS ON ENVIRONMENTAL AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:** None.

### **Statement of Rationale:**

The purpose of this regulation is to set forth the procedure for Secretary of Transportation approval of requests for routine operation and maintenance and emergency repairs. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

### **Text:**

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

Document No. 3165  
DEPARTMENT OF TRANSPORTATION  
CHAPTER 63  
Statutory Authority: 1976 Code Section 57-1-360

R.63-10. Transportation Project Prioritization

**Preamble:**

The South Carolina Department of Transportation proposes to promulgate a new regulation numbered 63-10 setting forth the procedure for prioritizing certain transportation improvement projects as required by Act 114 of 2007.

A Notice of Drafting for the proposed regulation was published in the State Register on July 27, 2007.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-10(A)	This section defines terms used in the regulation.
63-10(B)	This section describes the State Comprehensive Plan for transportation improvements and the process for adopting updated plans by SCDOT.
63-10(C)	This section describes and defines the project priority lists required by S.C. Code Section 57-1-370(B) (8) (Act 114 of 2007). It details the procedure by which SCDOT will create and adopt those lists, and provides for a justification based upon fiscal, engineering or other transportation considerations when a project is placed in the STIP which substantially deviates from the priority list.
63-10(D)	This section describes the Statewide Transportation Improvement Program (STIP) and the process for adopting a new STIP or revision to an existing STIP by SCDOT.
63-10(E)	This section describes the State Program and the process for adopting a new State Program or revision to an existing State Program by SCDOT.

**Notice of Public Hearing and Opportunity for Public Comment:**

Should a public hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws, as amended, such a hearing will be conducted at 955 Park Street, Columbia, South Carolina, on December 3, 2007. Written comments or requests for a hearing may be directed to Deborah Brooks Durden, Assistant Chief Counsel, PO Box 191, Columbia, South Carolina 29202. To be considered, comments should be received no later than November 26, 2007.

**Preliminary Fiscal Impact Statement:**

Significant costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

## 72 PROPOSED REGULATIONS

### Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION 63-10. Transportation Project Prioritization.

Purpose of amendment: The purpose of the regulations is to set forth the procedure for prioritizing certain transportation improvement projects as required by Act 114 of 2007.

Legal Authority: The legal authority for regulation 63-10 is section 57-1-360, SC Code of Laws.

Plan for Implementation: The promulgation of 63-10 will have a minimal effect on the practices of SCDOT. It will serve to notify the public of the procedures already being implemented as required by Act 114 of 2007.

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

The proposed regulation will benefit the public by creating a regulatory process for prioritizing transportation projects.

DETERMINATION OF COSTS AND BENEFITS: Significant costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. There will be no additional costs to the state imposed by the promulgation of this regulation.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENTAL AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECTS ON ENVIRONMENTAL AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: None.

### Statement of Rationale:

The purpose of this regulation is to set forth the procedure for prioritizing certain transportation improvement projects. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

### Text:

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



Document No. 3136  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 61**

Statutory Authority: 1976 Code Section 13-7-40, as amended

R.61-63. Radioactive Materials (Title A)

**Synopsis:**

The Nuclear Regulatory Commission continually updates regulations, and state regulations are amended regularly to incorporate federal updates. Section 274 of the Atomic Energy Act of 1954, as amended, requires that the states adopt federal regulations for compatibility. The Department has adopted and incorporated into R.61-63 the Nuclear Regulatory Commission updates as an item of compatibility. These amendments revise requirements for general licensees, portable gauge licensees, manufacturers and distributors, and amends the regulation regarding medical use of radioactive materials (Parts II, III and IV). These amendments comply with 10 CFR Parts 20, 30, 31, 32, 35, 40 and 70, Final Rules, published in the Federal Register on April 29, 2005, July 11, 2005 and March 27, 2006.

These amendments were approved by the Board of Health and Environmental Control on October 11, 2007. The revisions were promulgated to comply with federal law; neither a fiscal impact statement nor preliminary assessment report is required. See discussion of revisions below and a statement of need and reasonableness provided herein.

Discussion of Revisions:

(1) Clarifying revisions to Part II for General Licensees.

<u>SECTION</u>	<u>REVISION</u>
R.61-63.2.4.2.3.4.1	Adds omitted testing requirements.
R.61-63.2.4.2.3.7	Adds omitted requirements for General License exports.
R.61-63.2.4.2.3.14	Adds export requirements.
R.61-63.2.4.2.3.15	Adds reporting requirement for general licensees.
R.61-63.2.7.5.2.2.2	Removed date reference.
R.61-63.2.7.7.1	Adds source type.
R.61-63.2.10.7	Adds Security requirements for portable gauges.

(2) Typographical correction.

<u>SECTION</u>	<u>REVISION</u>
R.61-63.3.53	Corrects typographical error.

## 74 FINAL REGULATIONS

(3) Revisions to certification and training requirements.

<u>SECTION</u>	<u>REVISION</u>
R.61-63.4.2.26	Revises definition.
R.61-63.4.2.30.1	Revises reference sections.
R.61-63.4.19.2	Revised wording.
R.61-63.4.20	Revises certification process, references, and training requirements.
R.61-63.4.21	Revises certification process, references, and training requirements.
R.61-63.4.22	Revises certification process, references, and training requirements.
R.61-63.4.23.1	Adds effective date.
R.61-63.4.23.2	Adds effective date.
R.61-63.4.24	Removes deleted section reference.
R.61-63.4.36	Revises certification process, references, and training requirements.
R.61-63.4.37.2	Adds reference section.
R.61-63.4.39	Revises certification process, references, and training requirements.
R.61-63.4.43	Revises certification process, references, and training requirements.
R.61-63.4.44	Revises certification process, references, and training requirements.
R.61-63.4.45	Revises certification process, references, and training requirements.
R.61-63.4.54	Revises certification process, references, and training requirements.
R.61-63.4.74	Revises certification process, references, and training requirements.
Subpart J	Deleted entire subpart, requirements placed in other sections.

**Instructions: Amend R.61-63 pursuant to each individual instruction provided with the text below:**

**Text:**

**Revise R.61-63.2.4.2.3.4 to read:**

2.4.2.3.4 Shall maintain records showing compliance with the requirements of RHA 2.4.2.3.2 and 2.4.2.3.3. The records shall show the results of tests. The records also shall show the dates of performance of, and the names of the persons performing, testing installation services, and removal from installation concerning the radioactive material, its shielding or containment;

The licensee shall retain these records as follows:

**Add R.61-63.2.4.2.3.4.1:**

2.4.2.3.4.1 Each record of a test for leakage of radioactive material required by paragraph RHA 2.4.2.3.2 of this section must be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of.

**Add R.61-63.2.4.2.3.4.2:**

2.4.2.3.4.2 Each record of a test of the on-off mechanism and indicator required by paragraph RHA 2.4.2.3.2 of this section must be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of.

**Add R.61-63.2.4.2.3.4.3:**

2.4.2.3.4.3 Each record that is required by paragraph RHA 2.4.2.3.3 of this section must be retained for three years from the date of the recorded event or until the device is transferred or disposed of.

**Revise R.61-63.2.4.2.3.7 to read:**

2.4.2.3.7 Shall transfer or dispose of the device containing radioactive material only by export as provided by RHA 2.4.2.3.14 of this section, by transfer to another general licensee as authorized in RHA 2.4.2.3.8 or to a person authorized to receive the device by a specific license issued by this Department or by the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved under RHA 2.4.2.3.7.2. In complying with this section, the licensee:

**Revise R.61-63.2.4.2.3.7.1 to read:**

2.4.2.3.7.1 Shall furnish a report to the Department within 30 days after the transfer of a device to a specific licensee or export. The report must contain the identification of the device by manufacturer's (or initial transferor's) name, model number, and serial number; the name, address, and license number of the person receiving the device (license number not applicable if exported); and the date of the transfer.

**Add R.61-63.2.4.2.3.14:**

2.4.2.3.14 Shall not export the device containing radioactive material except in accordance with 10CFR part 110, Code of Federal Regulations;

**Add R.61-63.2.4.2.3.15:**

2.4.2.3.15 Shall respond to written requests from the Department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Chief of the Bureau of Radiological Health, SC Department of Health and Environmental Control, by an appropriate method listed in RHA 1.13 of this regulation, a written justification for the request.

**Revise R.61-63.2.7.5.2.2.2 to read:**

2.7.5.2.2.2 This individual meets the requirements specified in RHA 4.22.2 and 4.24 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist, or

## 76 FINAL REGULATIONS

### Revise R.61-63.2.7.7.1 to read:

2.7.7.1 An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Part IV of these regulations for uses as a calibration, transmission, or reference source or for the uses listed in RHA 4.46, 4.56, and 4.58 of Part IV of these regulations will be approved if:

### Add R.61-63.2.10.7:

2.10.7 Security requirements for portable gauges.

### Add R.61-63.2.10.7.1:

2.10.7.1 Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

### Revise R.61-63.3.53, Appendix B:

#### List of Elements

<u>Name</u>	<u>Symbol</u>	<u>No.</u>	<u>Atomic</u>
Thulium.....	Tm .....	69	

### Revise R.61-63.4.2.26 to read:

4.2.26 "Preceptor" means an individual who provides, directs or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

### Revise R.61-63.4.2.30.1 to read:

4.2.30.1 Meets the requirements in RHA 4.20.1 or 4.20.3 and RHA 4.24; or

### Revise R.61-63.4.19.2 to read:

4.19.2 Sealed sources or devices noncommercially transferred from a Part IV licensee or an Agreement State or NRC medical use licensee.

### Revise R.61-63.4.20.1 to read:

4.20.1 Is certified by a specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraphs 4.20.4 and 4.20.5 of this section. (The names of board certifications, which have been recognized by the NRC or an Agreement State, will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).)

### Add R.61-63.4.20.1.1:

4.20.1.1 To have its certification process recognized, a specialty board shall require all candidates for certification to:

**Add R.61-63.4.20.1.1.1:**

4.20.1.1.1 Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

**Add R.61-63.4.20.1.1.2:**

4.20.1.1.2 Have 5 or more years of professional experience in health physics (graduate training may be substituted for no more than 2 years of the required experience) including at least 3 years in applied health physics; and

**Add R.61-63.4.20.1.1.3:**

4.20.1.1.3 Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

**Add R.61-63.4.20.1.2.1:**

4.20.1.2.1 Hold a master's or doctorate degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

**Add R.61-63.4.20.1.2.2:**

4.20.1.2.2 Have 2 years of full-time practical training and/or supervised experience in medical physics:

**Add R.61-63.4.20.1.2.2.1:**

4.20.1.2.2.1 Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the NRC or an Agreement State; or

**Add R.61-63.4.20.1.2.2.2:**

4.20.1.2.2.2 In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in RHA 4.39 or RHA 4.43.

**Add R.61-63.4.20.1.2.3:**

4.20.1.2.3 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

**Revise R.61-63.4.20.2.1 to read:**

4.20.2.1200 hours of classroom and laboratory training in the following areas--

**Revise R.61-63.4.20.3 to read:**

4.20.3 Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the NRC or an Agreement State under RHA 4.21 and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as Radiation Safety Officer and who meets the requirements RHA 4.20.4 and 4.20.5; or

## 78 FINAL REGULATIONS

### **Add R.61-63.4.20.3.1:**

4.20.3.1 Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has Radiation Safety Officer responsibilities; and

### **Renumber and revise previous R.61-63.4.20.3 to 4.20.4 to read:**

4.20.4 Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in RHA 4.20.5, and 4.20.1.1.1 and 4.20.1.1.2, or 4.20.1.2.1 and 4.20.1.2.2 or 4.20.3 or 4.20.3.1 and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

### **Add R.61-63.4.20.5:**

4.20.5 Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a Radiation Safety Officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

### **Revise R.61-63.4.21.1 to read:**

4.21.1 Is certified by a specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraphs 4.21.3 and 4.21.4 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).) To have its certification process recognized, a specialty board shall require all candidates for certification to:

#### **Add R.61-63.4.21.1.1:**

4.21.1.1 Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university.

#### **Add R.61-63.4.21.1.2:**

4.21.1.2 Have 2 years of full-time practical training and/or supervised experience in medical physics--

##### **Add R.61-63.4.21.1.2.1:**

4.21.1.2.1 Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State; or

##### **Add R.61-63.4.21.1.2.2:**

4.21.1.2.2 In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in RHA 4.54 and 4.74; and

**Add R.61-63.4.21.1.3:**

4.21.1.3 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

**Revise R.61-63.4.21.2 to read:**

4.21.2 Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

**Add R.61-63.4.21.2.1:**

4.21.2.1 Performing sealed source leak tests and inventories;

**Add R.61-63.4.21.2.2:**

4.21.2.2 Performing decay corrections;

**Add R.61-63.4.21.2.3:**

4.21.2.3 Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

**Add R.61-63.4.21.2.4:**

4.21.2.4 Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

**Revise R.61-63.4.21.3 to read:**

4.21.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.21.1 or 4.21.2 and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in RHA 4.21 or 4.21.2 or equivalent NRC or Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

**Add R.61-63.4.21.4:**

4.21.4 Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

## **80 FINAL REGULATIONS**

### **Revise R.61-63.4.22.1 to read:**

4.22.1 Is certified as a nuclear pharmacist by a specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraph 4.22.3 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).) To have its certification process recognized, a specialty board shall require all candidates for certification to:

#### **Add R.61-63.4.22.1.1:**

4.22.1.1 Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

#### **Add R.61-63.4.22.1.2:**

4.22.1.2 Hold a current, active license to practice pharmacy;

#### **Add R.61-63.4.22.1.3:**

4.22.1.3 Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

#### **Add R.61-63.4.22.1.4:**

4.22.1.4 Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

### **Revise R.61-63.4.22.2.1 to read:**

4.22.2.1 200 hours of classroom and laboratory training in the following areas--

### **Revise R.61-63.4.22.3 to read:**

4.22.3 Has obtained written attestation signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in RHA 4.22.2 of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

### **Revise R.61-63.4.23.1 to read:**

4.23.1 An individual identified as a Radiation Safety Officer, a teletherapy or medical physicist, an authorized medical physicist, a nuclear pharmacist or an authorized nuclear pharmacist on an NRC or Agreement State license or a permit issued by an NRC or Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before April 29, 2005, need not comply with the training requirements of RHA 4.20, 4.21 or 4.22, respectively.

### **Revise R.61-63.4.23.2 to read:**

4.23.2 Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the NRC or Agreement State, a permit issued by an NRC master material licensee,



a permit issued by an NRC or Agreement State broad scope licensee, or a permit issued by an NRC master material license broad scope permittee April 29, 2005, who perform only those medical uses for which they were authorized on that date need not comply with the training requirements of Subparts D-H of this part.

**Revise R.61-63.4.24 to read:**

4.24 The training and experience specified in Subparts B, D, E, F, G, and H of this part must have been obtained within the 7 years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

**Revise R.61-63.4.35.2 to read:**

4.35.2 Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in RHA 4.39 or 4.43 and 4.39.3.2.7, or an individual under the supervision of either as specified in RHA 4.15; or

**Revise R.61-63.4.36.1 to read:**

4.36.1 Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraph 4.36.4 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).) To have its certification process recognized, a specialty board shall require all candidates for certification to:

**Add R.61-63.4.36.1.1:**

4.36.1.1 Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies that includes the topics listed in paragraphs 4.36.2 and 4.36.3 of this section; and

**Add R.61-63.4.36.1.2:**

4.36.1.2 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

**Revise R.61-63.4.36.3.2.2 to read:**

4.36.3.2.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

**Revise R.61-63.4.36.4 to read:**

4.36.4 Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in RHA 4.36, 4.39 or 4.43 or equivalent NRC requirements, that the individual has satisfactorily completed the requirements in RHA 4.36.1 or 4.36.3 and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under RHA 4.35.

**Revise R.61-63.4.37.2 to read:**

4.37.2 Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in RHA 4.39 or 4.43 and 4.39.3.2.7, or an individual under the supervision of either as specified in RHA 4.15;

## **82 FINAL REGULATIONS**

### **Revise R.61-63.4.39.1 to read:**

4.39.1 Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraph 4.39.3 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

#### **Add R.61-63.4.39.1.1:**

4.39.1.1 Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in paragraphs RHA 4.39.3 and 4.39.4 of this section; and

#### **Add R.61-63.4.39.1.2:**

4.39.1.2 Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

### **Revise R.61-63.4.39.2 to read:**

4.39.2 Is an authorized user under RHA 4.43 and meets the requirements in RHA 4.39.3.2.7 or equivalent NRC requirements; or

### **Revise R.61-63.4.39.3 to read:**

4.39.3 Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum,--

#### **Revise R.61-63.4.39.3.2 to read:**

4.39.3.2 Work experience, under the supervision of an authorized user, who meets the requirements in RHA 4.39 or 4.39.3.2.7, and 4.43 or equivalent NRC requirements, involving--

#### **Revise R.61-63.4.39.3.2.2:**

4.39.3.2.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

### **Revise R.61-63.4.39.4 to read:**

4.39.4 Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in RHA 4.39 or 4.43 and 4.39.3.2.7, or equivalent NRC requirements, that the individual has satisfactorily completed the requirements in RHA 4.39.1 or 4.39.3 and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under RHA 4.35 and 4.37.

### **Revise R.61-63.4.43.1 to read:**

4.43.1 Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraphs 4.43.2.2.7 and 4.43.3 of this section.

(Specialty boards whose certification processes have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).) To be recognized, a specialty board shall require all candidates for certification to:

**Add R.61-63.4.43.1.1:**

4.43.1.1 Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in paragraphs 4.43.2.1 through 4.43.2.2.5 of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

**Add R.61-63.4.43.1.2:**

4.43.1.2 Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

**Revise R.61-63.4.43.2 to read:**

4.43.2 Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include--

**Revise R.61-63.4.43.2.2.2 to read:**

4.43.2.2.2 Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

**R.61-63.4.43.2.2.6 Reserved**

**Revise R.61-63.4.43.2.2.7.1 to read:**

4.43.2.2.7.1 Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

**Revise R.61-63.4.43.2.2.7.3 to read:**

4.43.2.2.7.3 Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

**Revise R.61-63.4.43.2.2.7.4 to read:**

4.43.2.2.7.4 Parenteral administration of any other radionuclide, for which a written directive is required; and

**Revise R.61-63.4.43.3 to read:**

4.43.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.43.1 and 4.43.2.2.7 or 4.43.2 and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under RHA 4.40. The written certification must be signed by a preceptor authorized user who meets the requirements in RHA 4.43, or equivalent NRC requirements. The

## **84 FINAL REGULATIONS**

preceptor authorized user, who meets the requirements in RHA 4.43.2, must have experience in administering dosages in the same dosage category or categories (i.e., RHA 4.43.2.2.7.1, 4.43.2.2.7.2, 4.43.2.2.7.3, or 4.43.2.2.7.4) as the individual requesting authorized user status.

### **Add R.61-63.4.43.4:**

4.43.4 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

Except as provided in RHA 4.23, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who--

### **Add R.61-63.4.43.4.1:**

4.43.4.1 Is an authorized user under RHA 4.43 uses listed in RHA 4.43.2.2.7.3 or 4.43.2.2.7.4 or equivalent NRC or Agreement State requirements; or

### **Add R.61-63.4.43.4.1.1:**

4.43.4.1.1 Is an authorized user under RHA 4.46, 4.74, or equivalent NRC or Agreement State requirements and who meets the requirements in RHA 4.43.4.2 of this section; or

### **Add R.61-63.4.43.4.1.2:**

4.43.4.1.2 Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State under RHA 4.46 or 4.74, and who meets the requirements in RHA 4.43.4.2 of this section.

### **Add R.61-63.4.43.4.2:**

4.43.4.2 Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training must include--

### **Add R.61-63.4.43.4.2.1:**

4.43.4.2.1 Radiation physics and instrumentation;

### **Add R.61-63.4.43.4.2.2:**

4.43.4.2.2 Radiation protection;

### **Add R.61-63.4.43.4.2.3:**

4.43.4.2.3 Mathematics pertaining to the use and measurement of radioactivity;

### **Add R.61-63.4.43.4.2.4:**

4.43.4.2.4 Chemistry of radioactive material for medical use; and

**Add R.61-63.4.43.4.2.5:**

4.43.4.2.5 Radiation biology; and

**Add R.61-63.4.43.4.3:**

4.43.4.3 Has work experience, under the supervision of an authorized user who meets the requirements in RHA 4.43, or equivalent NRC or Agreement State requirements, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in RHA 4.43 must have experience in administering dosages as specified in RHA 4.43.2.2.7.3 and/or RHA 4.43.2.2.7.4. The work experience must involve--

**Add R.61-63.4.43.4.3.1:**

4.43.4.3.1 Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

**Add R.61-63.4.43.4.3.2:**

4.43.4.3.2 Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

**Add R.61-63.4.43.4.3.3:**

4.43.4.3.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

**Add R.61-63.4.43.4.3.4:**

4.43.4.3.4 Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

**Add R.61-63.4.43.4.3.5:**

4.43.4.3.5 Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

**Add R.61-63.4.43.4.3.6:**

4.43.4.3.6 Administering dosages to patients or human research subjects, that include at least 3 cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least 3 cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

**Add R.61-63.4.43.4.4:**

4.43.4.4 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.43.4.1.1 and 4.43.4.1.2 of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in RHA 4.43 or equivalent NRC or Agreement State requirements. A preceptor authorized user,

## 86 FINAL REGULATIONS

who meets the requirements in RHA 4.43, must have experience in administering dosages as specified in RHA 4.43.2.2.7.3 and/or RHA 4.43.2.2.7.4.

### **Revise R.61-63.4.44.1.1 to read:**

4.44.1.1 Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs 4.44.1.3 and 4.44.1.4 of this section and whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraph 4.44.1.5 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov)); or

### **Revise R.61-63.4.44.1.2 to read:**

4.44.1.2 Is an authorized user under RHA 4.43, for uses listed in RHA 4.43.2.2.7.1 or 4.43.2.2.7.2, RHA 4.45, or equivalent NRC requirements; or

### **Revise R.61-63.4.44.1.4.2 to read:**

4.44.1.4.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

### **Revise R.61-63.4.44.1.5 to read:**

4.44.1.5 Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.44.1.3 and 4.44.1.4 and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under RHA 4.40. The written certification must be signed by a preceptor authorized user who meets the requirements in RHA 4.43.1, 4.43.2, 4.44, 4.45 or equivalent NRC requirements. A preceptor authorized user, who meets the requirement in RHA 4.43.2, must have experience in administering dosages as specified in RHA 4.43.2.2.7.1 or 4.43.2.2.7.2.

### **Revise R.61-63.4.45.1.1 to read:**

4.45.1.1 Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs 4.45.1.3 and 4.45.1.4 of this section, and whose certification has been recognized by the NRC or an Agreement State, and who meets the requirements in paragraph 4.45.1.5 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov)); or

### **Revise R.61-63.4.45.1.4.2 to read:**

4.45.1.4.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

### **Revise R.61-63.4.45.1.5 to read:**

4.45.1.5 Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.45.1.3 and 4.45.1.4 and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under RHA 4.40. The written certification must be signed by a preceptor authorized user who meets the requirements in RHA 4.43, RHA 4.45 or equivalent NRC requirements. A preceptor authorized user, who meets the requirements in RHA 4.43.2, must have experience in administering dosages as specified in RHA 4.43.2.2.7.2.

**Revise R.61-63.4.54.1.1 to read:**

4.54.1.1Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, and who meets the requirements in paragraph 4.54.1.4 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

**Add R.61-63.4.54.1.1.1:**

4.54.1.1.1 Successfully complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

**Add R.61-63.4.54.1.1.2:**

4.54.1.1.2 Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

**Revise R.61-63.4.54.1.3 to read:**

4.54.1.3Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in RHA 4.54 or equivalent NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by RHA 4.54.1.2.2; and

**Revise R.61-63.4.54.1.4 to read:**

4.54.1.4Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in RHA 4.54 or equivalent NRC requirements, that the individual has satisfactorily completed the requirements in RHA 4.54.1.1 or 4.54.1.2 and RHA 4.54.1.3 and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under RHA 4.46.

**Revise R.61-63.4.55.1.4 to read:**

4.55.1.4Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in RHA 4.54, 4.55, or equivalent NRC requirements, that the individual has satisfactorily completed the requirements in RHA 4.55.1.1 and 4.55.1.2 and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

**Revise R.61-63.4.57.1.1 to read:**

4.57.1.1Is certified by a specialty board whose certification process includes all of the requirements in RHA 4.57.1.2 and 4.57.1.3 and whose certification has been recognized by the NRC or an Agreement State; or

## **88 FINAL REGULATIONS**

### **Renumber and revise previous R.61-63.4.57.1.2.5 to 4.57.1.3 to read:**

4.57.1.3Has completed training in the use of the device for the uses requested.

### **Revise R.61-63.4.74.1.1 to read:**

4.74.1.1Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in paragraphs 4.74.1.4 and 4.74.1.5 of this section. (The names of board certifications which have been recognized by the NRC or an Agreement State will be posted on the NRC's Web page, [www.nrc.gov](http://www.nrc.gov).) To have its certification process recognized, a specialty board shall require all candidates for certification to:

#### **Add R.61-63.4.74.1.1.1:**

4.74.1.1.1 Successfully complete a minimum of 3 years of residency training in radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physician and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

#### **Add R.61-63.R.74.1.1.2:**

4.74.1.1.2 Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

### **Revise R.61-63.4.74.1.3 to read:**

4.74.1.3Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in RHA 4.74 or equivalent NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by RHA 4.74.1.2.2; and

### **Revise R.61-63.4.74.1.4 to read:**

4.74.1.4Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.74.1.2 and 4.74.1.3 and 4.74.1.5 and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in RHA 4.74 or equivalent NRC requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status.

#### **Add R.61-63.4.74.1.5:**

4.74.1.5Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

## **SUBPART J Reserved**



**Statement of Need and Reasonableness:**

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

DESCRIPTION OF REGULATION: R.61-63, Radioactive Materials (Title A)

Purpose: Regulation 61-63 has been amended in accordance with changes to Federal Regulation 10 CFR Parts 20, 30, 31, 32, 35, 40 and 70.

Legal Authority: This change to state law is authorized by S.C. Code Section 13-7-40 and required by Section 274 of the Atomic Energy Act, 40 U.S.C. Section 2021b.

Plan for Implementation: Upon approval by the Board of Health and Environmental Control and publication in the S.C. State Register, existing staff of the Bureau of Radiological Health will implement these changes. The additional requirements are expected to require 30 man days of effort. Impact on other program areas will be slight.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS AND EXPECTED BENEFIT: These regulatory amendments are exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because each change is necessary to maintain compatibility with Federal regulations. In amending the Federal regulations, the U.S. Nuclear Regulatory Commission found the following:

These amendments revise requirements for general licensees, portable gauge licensees, manufacturers and distributors.

These revisions amend the training requirements regarding medical use of radioactive materials.

DETERMINATION OF COSTS AND BENEFITS: No additional cost will be incurred by the State or its political subdivisions by the implementation of these amendments. Existing staff and resources will be utilized to implement this amendment to the regulation. It is anticipated that the amendment will not create any significant additional cost to the regulated community based on the fact that requirements or changes to the regulation will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: It is necessary to update existing regulations as changes occur at the federal level in order to maintain compatibility with the federal government and other Agreement States. This will ensure an effective regulatory program for radioactive material users under state jurisdiction, and protection of the public and workers from unnecessary exposure to ionizing radiation.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None. Federal requirements will apply to all affected users. The amendments eliminate possible duplicative or redundant requirements.