Agency Name: Department of Health and Environmental Control

Statutory Authority: 13‑7‑10 et seq.

Document Number: 5226

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Subject: Transportation of Radioactive Waste Into or Within South Carolina

History: 5226

By Date Action Description Jt. Res. No. Expiration Date

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‑ 01/09/2024 Received President of the Senate & Speaker 05/08/2024

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 provided for in the Regulation

Document No. 5226

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 13‑7‑10 et seq.

61‑83. Transportation of Radioactive Waste Into or Within South Carolina.

**Synopsis**:

Pursuant to S.C. Code Ann., Sections 13‑7‑10 et seq., the Department of Health and Environmental Control (“Department”) requires compliance with all applicable provisions and current revisions of Title 10, Part 71 of the Code of Federal Regulations (10 CFR 71), and any disposal facility’s radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage or delivery of radioactive materials. The Department proposes amending R.61‑83 to incorporate 10 CFR 71 regulations promulgated in 2018, provide clarification for conformance with disposal site criteria, include an exemption allowance to be consistent with R.61‑63, *Radioactive Materials (Title A)*, and update forms to the current Department documents in use. The proposed amendments may also include stylistic changes, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the April 28, 2023, South Carolina State Register.

Section‑by‑Section Discussion of Amendment:

|  |  |  |
| --- | --- | --- |
| **Section** | **Type of Change** | **Purpose** |
| Statutory Authority | Addition | Added statutory authority for clarity. |
| Table of Contents | Reorganization | Updated to reflect proposed amendments to regulatory text. |
| Section 1 |  |  |
|  1.2 | Addition/Deletion | Cited Federal regulations adopted by reference. |
| Section 2 |  |  |
|  2.1‑2.2 | Technical Correction | Corrected for punctuation. |
|  2.11.1‑2.11.2 | Technical Correction, Revision | Corrected for punctuation and to clarify shipper reference. |
| Section 3 |  |  |
|  3.1 | Revision | Revised contact information and revise form number. |
|  3.2, 3.2.3, 3.2.4 | Technical Correction | Corrected for punctuation. |
|  3.2.5 | Technical Correction, Revision | Corrected for punctuation and to clarify shipper reference. |
|  3.3 | Revision | Amended to add criteria type. |
|  3.5.1‑3.5.2 | Revision | Amended for stylistic clarity. |
| Section 4 |  |  |
|  4.1 | Revision | Amended for stylistic clarity. |
|  4.1.1 | Revision | Updated form identification number. |
|  4.1.2 | Revision | Amended to clarify shipper reference. |
|  4.2 | Revision | Updated form identification number. |
|  4.3 | Revision | Updated form identification number. |
|  4.4 | Revision | Updated form identification number. |
| Section 5 |  |  |
|  5.1 | Revision | Updated form identification number. |
|  5.1.1‑5.1.2 | Technical Correction | Corrected for punctuation. |
|  5.1.3 | Revision | Updated form identification number. |
|  5.2 | Revision | Updated form identification number. |
|  5.3 | Revision | Updated form identification number. |
| Section 7 |  |  |
|  7.1.1 | Technical Correction | Corrected for misspelled word. |
|  7.1.2 | Revision | Amended for stylistic clarity and to clarify shipper reference. |
|  7.2.1 | Technical Correction | Corrected for punctuation. |
|  7.2.2 | Revision | Amended for stylistic clarity and to clarify shipper reference. |
|  7.4 | Revision | Amended for stylistic clarity. |
| Section 8 (new) | Addition | Included an exemption for consistency with R.61‑63. |
| Section 9 (previous Section 8) | Technical Correction | Corrected for codification. |
| Attachments | Deletion | Removed forms from the regulations and indicate by reference source of forms. |

**Instructions:**

Print the regulation as shown below.

**Text:**

61‑83. Transportation of Radioactive Waste Into or Within South Carolina.

Statutory Authority: S.C. Code Ann. Sections 13‑7‑10 et seq.

Table of Contents:

Section 1 Scope

Section 2 Definitions

Section 3 Permits

Section 4 Shipper’s Requirements

Section 5 Carrier’s Requirements

Section 6 Disposal Facility Operator

Section 7 Penalties

Section 8 Exemptions from the Requirements of this Regulation

Section 9 Severability Clause

1. SCOPE

 1.1 This regulation applies to any shipper, carrier or other person who transports radioactive waste into or within this State, to any persons involved in the generation of radioactive waste within this State, and to any shipper whose radioactive waste is transported into or within this State or is delivered, stored, or disposed of within this State.

 1.2 All persons subject to the provisions of this regulation shall comply with all applicable provisions of the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised February 23, 2018, (with the exception of sections 71.2, 71.6, 71.11, 71.14(b), 71.17, 71.19, 71.21, , 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71‑85(a)‑(c), 71‑91(b)‑(d), 71.99 and 71.100), 71.101(a), 71.101(b), 71.101(c)(1), 71.101(c)(2), 71.101(d), 71.101(e), 71.103(a), 71.106, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, and 71.135.

2. DEFINITIONS

 2.1 “Carrier” means any person transporting radioactive wastes into or within the State for storage, disposal, or delivery.

 2.2 “Department” means the Department of Health and Environmental Control, including personnel authorized to act on behalf of the Department.

 2.3 “Disposal facility” means any facility located within the State, which accepts radioactive waste for storage or disposal.

 2.4 “Generation” means the act or process of producing radioactive waste.

 2.5 “Manifest” means the document used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

 2.6 “Operator” means every person who drives or is in actual physical control of a vehicle transporting radioactive waste.

 2.7 “Persons” means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership or any other entity whatsoever.

 2.8 “Permit” means an authorization issued by the Department to any person involved in the generation of radioactive waste, to transport such radioactive wastes or offer such waste for transport.

 2.9 “Radioactive waste” means any and all equipment or materials, including irradiated nuclear reactor fuel, which are radioactive or have radioactive contamination and which are required pursuant to any governing laws, regulations, or licenses to be disposed of as radioactive waste.

 2.10 “Radiological violation” means radioactive contamination or the emission of radiation in excess of applicable limits.

 2.11 “Shipper” means any person, whether a resident of South Carolina or a non‑resident:

 2.11.1 who transfers radioactive waste to a carrier for transportation into or within the State; or

 2.11.2 who transports their own radioactive waste into or within the State; or

 2.11.3 who transfers radioactive waste to another person if such Waste is transported into or within the State.

 2.12 “Transport” means the movement of radioactive wastes into or within South Carolina.

3. PERMITS

 3.1 Before any shipper transports or causes to be transported radioactive waste into or within the State of South Carolina, the shipper shall purchase an annual radioactive waste transport permit from the Department. An application for a permit shall be submitted on Department Form SCDHEC‑0800 “Application for Radioactive Waste Transport Permit” together with the necessary fee to: S.C. Department of Health and Environmental Control (SCDHEC), Bureau of Land and Waste Management/Radioactive Waste Management Section, 2600 Bull Street, Columbia, South Carolina, 29201. These forms are available on the Department website, or by other means the Department may provide.

 3.2 Before a permit shall be issued, the shipper must deposit and maintain with the Department a cash or corporate surety bond in the amount of Five Hundred Thousand Dollars ($500,000.00); or provide to the Department satisfactory evidence of liability insurance.

 3.2.1 For purposes of this regulation, liability insurance shall mean coverage of Five Hundred Thousand Dollars ($500,000.00) per occurrence and One Million Dollars ($1,000,000.00) aggregate, or as otherwise provided by State law.

 3.2.2 Any insurance carried pursuant to Section 2210 of Title 42 of the United States Code and Part 140 of Title 10 of the Code of Federal Regulations shall be sufficient to meet the requirements of this section.

 3.2.3 Liability insurance shall be specific to the packaging, transportation, disposal, storage, and delivery of radioactive waste.

 3.2.4 Shippers maintaining liability insurance for the purpose of this regulation may provide to the Department a certificate of insurance from their insurer indicating the policy number, limits of liability, policy date, and specific coverage for packaging, transportation, disposal, storage, and delivery of radioactive materials.

 3.2.5 A cash or corporate surety bond previously posted will be returned to the shipper upon notification to the Department in writing of his or her intention to cease shipments of radioactive waste into or within the State. Such bond will be returned after the last such shipment is accepted safely at its destination.

 3.3 Each permit application shall include a certification to the Department that the shipper will comply fully with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions and waste acceptance criteria of the disposal facility regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

 3.4 Each permit application shall include a certification that the shipper will hold the State of South Carolina harmless for all claims, actions, or proceedings in law or equity arising out of radiological injury or damage to persons or property occurring during the transportation of its radioactive waste into or within the State including all costs of defending the same; provided, however, that nothing contained herein shall be construed as a waiver of the State’s sovereign immunity; and, further provided, that agencies of the State of South Carolina shall not be subject to the requirements of this provision.

 3.5 Permit fees will be annually determined and assessed by the Department based on the following classifications:

 3.5.1 Class X—more than an annual total of seventy‑five cubic feet (75 ft.3) or more than one hundred curies (100 Ci) of radioactive waste for disposal within the State.

 3.5.2 Class Y—an annual total of seventy‑five cubic feet (75 ft.3) or less of radioactive waste consisting of one hundred curies (100 Ci) or less total activity for disposal within the State.

 3.5.3 Class Z—any shipment of radioactive waste, which is not consigned for storage or disposal within the State, but which is transported into or within the State.

 3.6 Permits will be valid from the date of issuance through December 31 of each calendar year. Permit fees are not refundable. Permits may be renewed by filing a new application with the Department.

4. SHIPPER’S REQUIREMENTS

 4.1 Before any shipment of radioactive waste may be transported into or within the State, the shipper shall give written notice to the Department not less than seventy‑two (72) hours nor more than thirty (30) calendar days before the expected date of arrival of the shipment or departure from the shipper’s facility within the State as the case may be, except as provided in paragraph 4.1.3.

 4.1.1 All prior notifications shall be filed on a Department form designated as SCDHEC‑0802 “Radioactive Waste Shipment Prior Notification and Manifest Form.”

 4.1.2 The shipper shall immediately notify the Department of any cancellations or significant changes in the prior notification or manifest summary which may occur prior to the shipment departing the facility. For example, such changes include changes in date of arrival, carrier, route, waste description, curie content, volume, or waste classification.

 4.1.3 For shipments consisting of seventy‑five cubic feet (75 ft.3) or less containing one curie (1 Ci) of radioactive material or less which may be consigned as non‑exclusive use shipments according to applicable U.S. Department of Transportation regulations, the requirement for prior notification contained in paragraph 4.1 is waived. Such shipments must otherwise comply with all other applicable requirements regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

 4.2 The shipper shall provide to the carrier with each separate shipment a copy of the SCDHEC‑0802 “Radioactive Waste Shipment Prior Notification and Manifest Form” required by paragraph 4.1. Such copy shall show any changes made pursuant to paragraph 4.1.2 above. Each shipper shall instruct the carrier to comply with the route and schedule contained therein.

 4.3 The manifest accompanying each shipment of radioactive waste shall include a copy of the shipper’s certification prepared on Department form SCDHEC‑0803, Part I, “Radioactive Waste Shipment Certification Form,” which shall include certification that the shipment has been inspected and complies with all applicable State and Federal laws and administrative rules and regulations, license or license conditions of the disposal facility regarding the packaging, transportation, storage, disposal, and delivery of radioactive wastes.

 4.4 Following acceptance of each separate shipment at a disposal facility or at the consignee’s facility, it shall be the responsibility of each shipper to provide to the Department for such shipment a copy of the Department form SCDHEC‑0802 “Radioactive Waste Shipment Prior Notification and Manifest Form” with the Consignee Acknowledgement properly executed and to provide the Department with the “Radioactive Waste Shipment Certification Form,” Department form SCDHEC‑0803 which accompanied that shipment.

5. CARRIER’S REQUIREMENTS

 5.1 For each shipment of radioactive waste materials shipped into or within the State, a carrier shall complete Part II: Carrier’s Certification on the form SCDHEC‑0803 provided by the generator. The certificate shall be signed by a principal, officer, partner, responsible employee, or other authorized agent of the carrier.

 5.1.1 The carrier shall certify that the shipment is properly placarded for transport and that all shipping papers required by law and administrative rules and regulations have been properly executed; and

 5.1.2 that the transport vehicle has been inspected and meets the applicable requirements of the Federal government and the State of South Carolina, and that all safety and operational components are in good operative condition; and

 5.1.3 that the carrier has received a copy of the shipper’s “Radioactive Waste Shipment Prior Notification and Manifest Form,” form SCDHEC‑0802 specified in paragraph 4.2 and the “Radioactive Waste Shipment Certification Form,” form SCDHEC‑0803 specified in paragraph 4.3; and

 5.1.4 that the carrier shall comply fully with all applicable laws and administrative rules and regulations, both State and Federal, regarding the transportation of such waste.

 5.2 A carrier shall immediately notify the Department of any variance, occurring after departure, from the primary route and estimated date of arrival of shipment as provided by the shipper on Form SCDHEC‑0802.

 5.3 The copies of Forms SCDHEC‑0803 and SCDHEC‑0802 shall accompany the shipment to the destination and shall be presented together with the manifest and other shipping papers.

6. DISPOSAL FACILITY OPERATOR

 6.1 Owners and operators of disposal facilities shall permanently record, and report to the Department within twenty‑four (24) hours after discovery, all conditions in violation of the requirements of this regulation discovered as a result of inspections required by any license under which the facility is operated.

 6.2 Prior to the receipt of radioactive wastes at a disposal facility in this State, the owners and operators of such facility shall notify each shipper of any special requirements, if any, in effect regarding the packaging, transportation, storage, disposal, or delivery of such wastes at that facility.

 6.3 No owner or operator of a disposal facility located within this State shall accept radioactive waste for storage or disposal unless the shipper of such waste has a valid, unsuspended permit issued pursuant to this regulation.

7. PENALTIES

 7.1 Any person who commits a radiological violation shall:

 7.1.1 be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00); and

 7.1.2 if such person is a shipper, have his or her permit suspended for a period of not less than thirty (30) calendar days and until such time as he or she demonstrates to the Department’s satisfaction that adequate measures have been taken to prevent reoccurrence of the violation.

 7.2 Any person who commits a second radiological violation within twelve (12) months of the first such violation shall:

 7.2.1 be fined not less than Five Thousand ($5,000.00) nor more than Twenty‑five Thousand Dollars ($25,000.00); and

 7.2.2 if such person is a shipper, have his or her permit suspended for a period of not more than one (1) year and until such time as he or she demonstrates to the satisfaction of the Department that adequate measures have been taken to prevent reoccurrence of the violations.

 7.3 Any person who commits a non‑radiological violation of the provisions of this regulation shall be fined not more than One Thousand Dollars ($1,000.00) for each violation; *provided*, that should the Department determine that a series of such violations has occurred, the Department shall suspend or revoke that person’s permit for a period of not more than twelve (12) months.

 7.4 Any person to whom an order, injunction, suspension, or fine issued under this article is directed shall comply therewith immediately, but on application to the Department, within twenty (20) calendar days after the date of the order, shall be afforded a hearing within thirty (30) calendar days of such application.

8. EXEMPTIONS FROM REQUIREMENTS OF THIS REGULATION

 The Department may, upon application thereof or upon its own initiative, grant such exemptions or exceptions from the requirements of this regulation as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

9. SEVERABILITY CLAUSE

 It is hereby declared that each of the sections and provisions of this regulation are severable, if that any one or more of such sections are declared unconstitutional or invalid, the remaining sections and provisions of this regulation shall remain in effect.

**Fiscal Impact Statement:**

None.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1‑23‑115(C)(1)‑(3) and (9)‑(11):

DESCRIPTION OF REGULATION: R.61‑83, Transportation of Radioactive Waste Into or Within South Carolina.

Purpose: The Department proposes amending R.61‑83, Transportation of Radioactive Waste Into or Within South Carolina, to incorporate the 2018 revisions to 10 CFR 71, and any disposal facility’s radioactive material license requirements and site disposal criteria regarding the packaging, transportation, disposal, storage, or delivery of radioactive materials.

Legal Authority: 1976 Code Sections 13‑7‑10 et seq.

Plan for Implementation: The amendments will take legal effect upon Board approval and upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendment. In Addition, a copy of the regulation will be posted on the Department’s website, accessible at [www.scdhec.gov/regulations‑table](http://www.scdhec.gov/regulations-table). For a fee, printed copies may also be requested, for a fee, from the Department’s Freedom of Information Office.

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

Adoption of the proposed amendments of R.61‑83 enables compliance with federal regulations and standards.

DETERMINATION OF COSTS AND BENEFITS:

The proposed amendment will potentially relieve the burden to the regulated community by providing the ability to grant exemptions from the requirements of the regulation when authorized by law and when SCDHEC determines it will not result in undue hazard to public health and safety of property.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These proposed amendments will promote an effective regulatory program for radioactive material users under state jurisdiction, and protection of the public and workers from unnecessary exposure to ionizing radiation. These proposed changes will also provide updates to the transportation safety standards for radioactive materials.

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

The State’s authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

**Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Ann., Section 1‑23‑110(A)(3)(h):

The regulation was promulgated pursuant to Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, amending S.C. Code Ann. 13‑7‑10 *et seq*. of the South Carolina Atomic Energy and Radiation Control Act. The purpose of the regulation is to require written notification to the Department of shipments of radioactive waste by any shipper, carrier, or other person who transports such waste within the State’s borders. An additional purpose of the regulation is to require that shippers of waste obtain adequate financial assurance and hold the State harmless in case of radiological injury or damage arising out of the transportation of the waste, and for the enforcement of transportation and disposal requirements of radioactive waste. This regulation applies to generators and shippers of radioactive waste, including, for example, nuclear power plants, waste brokers and processors, educational and government institutions, and research facilities.