

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

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Published January 24, 2003

Volume 27 Issue No.1

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.

2003 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	1/10	2/14	3/14	4/11	5/9	6/13	7/11	8/8	9/12	10/10	11/14	12/12
Publishing Date	1/24	2/28	3/28	4/25	5/23	6/27	7/25	8/22	9/26	10/24	11/28	12/26

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) 734-2145.

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

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

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 The history, status, and full text of these regulations are available on the
 South Carolina General Assembly Home Page: www.scstatehouse.net

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2663		Bonds for Water and Wastewater Utilities	2-09-03	Public Service Commission
2711		Foster Care	2-17-03	Department of Social Services
2726		School Incentive Reward Program	2-23-03	Board of Education
2709		Nonpublic Postsecondary Institutions	2-25-03	Commission on Higher Education
2712		Residential Group Care Organizations for Children	3-30-03	Department of Social Services
2729		Fees	4-02-03	LLR: Board of Pharmacy
2731		Diseases and Health documentation	4-15-03	Clemson University
2727		Witchweed Quarantine	4-15-03	Clemson University
2733		Examination	4-21-03	LLR: Board of Chiropractic Examiners
2732		Advertising and Solicitation	4-21-03	LLR: Board of Chiropractic Examiners
2730		Criminal Justice Academy Training Regulations	5-06-03	Department of Public Safety
2728		Transfer of Duties and Responsibilities	5-23-03	LLR: Board for Barrier Free Design
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2800		Environmental Protection Fee	5-30-03	Dept Health and Envir Control

WITHDRAWN:

DOC NO.	DATE	SUBJECT	EXP. DATE	AGENCY
2360	8 16 02	LIFE Scholarship	1-15-03	Commission on Higher Education

2 EXECUTIVE ORDERS

2003-01

WHEREAS, by Executive Order 2002-38, a state of emergency was declared and existed in the State of South Carolina from December 4, 2002, through December 5, 2002, due to a severe winter storm which resulted in hazardous conditions in several areas of the State; and

WHEREAS, because of the state of emergency and hazardous weather conditions, it was necessary for most banks and savings and loan institutions in York County to be closed for the entire business day of Thursday, December 5, 2002.

NOW, THEREFORE, pursuant to the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of this State, and specifically Section 53-5-55 of the South Carolina Code of Laws, I hereby declare December 5, 2002 a legal holiday for banks and savings and loan institutions in York County.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 6th DAY OF JANUARY, 2003.**

**JIM HODGES
Governor**

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication January 24, 2003, 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 Cherokee County

Replacement of a mobile Magnetic Resonance Imaging (MRI) unit with a fixed 1.5T MRI scanner.
Upstate Carolina Medical Center
Gaffney, South Carolina
Project Cost: \$2,100,000

Affecting Dorchester County

Renovation and expansion of the emergency room, addition of a second Computed Tomography (CT) scanner, and expansion of the mechanical system.
Summerville Medical Center
Summerville, South Carolina
Project Cost: \$11,800,000

Affecting Laurens County

Replace existing Computed Tomography (CT) Scanner with no change in the licensed bed capacity of the hospital.
Laurens County Health Care System
Clinton, South Carolina
Project Cost: \$968,617

Affecting Pickens County

Replacement and upgrade of the existing Computed Tomography (CT) scanner at Palmetto Baptist Medical Center-Easley with a Multi-slice CT scanner.
Palmetto Baptist Medical Center-Easley
Easley, South Carolina
Project Cost: \$1,521,340

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 January 24, 2003. "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.

4 NOTICES

Affecting Darlington County

Construction to add ten (10) rehabilitation beds, resulting in a total of ten (10) rehabilitation beds, and 116 acute care beds.

Carolina Pines Regional Medical Center

Hartsville, South Carolina

Project Cost: \$13,634,796

Affecting Lancaster County

Construction of an ambulatory surgery center with two (2) operating rooms, two (2) endoscopy rooms, and one (1) cystoscopy procedure room.

Springs Ambulatory Surgery Center

Lancaster, South Carolina

Project Cost: \$5,990,710

Affecting Spartanburg County

Development of a Radiation Oncology Center with a linear accelerator on the campus of Mary Black Hospital.

Cancer Centers of the Carolinas

Spartanburg, South Carolina

Project Cost: \$4,058,581

PUBLIC NOTICE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Pursuant to SC Code 49-21-40 and R. 121-12.7, the South Carolina Department of Health and Environmental Control gives notice that the Town of Batesburg-Leesville has filed a Class I Interbasin Transfer Application to transfer water from the Edisto River basin to Saluda River basin. The Interbasin Transfer Application is for renewal of an existing Interbasin Transfer Registration for 2.5 million gallons per day which expires November 15, 2005. Raw water is withdrawn from Lightwood Knot Creek and Duncan Creek (Town Pond), both in the Edisto Basin. Water is treated and distributed to Batesburg-Leesville service area which lies in both the Edisto and Saluda basins and to Ridge Spring in the Saluda basin. The requested duration of the permit is twenty (20) years to withdraw a daily average of 2.5 million gallons of water a day.

Any person may request a copy of the application by submitting a statement to the address below specifying how you will be affected. Any person may submit comments on the application; to be considered, comments must be received by the Department by the close of business on May 31, 2003. Any person wishing to receive notification of the permit decision should submit a request for such notification (which may be included with your comments) to the address below.

Comments should be directed to:

Tricia H. Kilgore

SCDHEC

Bureau of Water

2600 Bull Street

Columbia, SC 29201

(803) 898-4202

PUBLIC NOTICE**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Pursuant to SC Code §49-21-40 and R. 121-12.7, the South Carolina Department of Health and Environmental Control gives notice that the City of Clinton has filed a Class I Interbasin Transfer Application to transfer water from the Broad River basin to Saluda River basin. The Interbasin Transfer Permit Application is for the renewal of an Interbasin Transfer Registration which expires November 15, 2005. The Registration amount is 6.0 million gallons per day. The requested duration of the permit is twenty (20) years, and the requested withdrawal amount is 6.0 million gallons of water a day. Raw water is withdrawn from the Enoree River and the Duncan Creek Reservoir, both in the Broad River basin. Water is treated and distributed to the City of Clinton service area, which lies in both the Broad and Saluda basins, and is sold to Laurens County Water and Sewer Commission in the Saluda basin. Wastewater from the City of Clinton service area is treated at the Clinton Joanna Wastewater Treatment Plant and discharged into the Bush River in the Broad River basin.

Any person may request a copy of the application by submitting a statement to the address below specifying how you will be affected. Any person may submit comments on the application; to be considered, comments must be received by the Department by the close of business on June 16, 2003. Any person wishing to receive notification of the permit decision should submit a request for such notification (which may be included with your comments) to the address below.

Comments should be directed to:

Tricia H. Kilgore
SCDHEC
2600 Bull Street
Columbia, SC 29201
(803) 898-4202

DEPARTMENT OF LABOR, LICENSING AND REGULATION**NOTICE OF PUBLIC HEARING****OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The South Carolina Department of Labor, Licensing, and Regulation (LLR) does hereby give notice under Section 41-15-220, S.C. Code of Laws, 1976, as amended, that a public hearing will be held on March 5, 2003, at 10:00 a.m. at the S.C. Department of LLR, 1st floor, room 103, 3600 Forest Drive, Columbia, S.C., at which time interested persons will be given the opportunity to appear and present views on the occupational safety and health standards being considered for adoption, which are as follows:

In Subarticle 7 (Construction):

Revisions to 1926.200-1926.203 on Signs, Signals & Barricades.

In Subarticle 6 (General Industry):

Revisions to Subpart E, Section 1910.33-39 Exit Routes, Emergency Action Plans, and Fire Prevention Plans with related revisions to 1910.119, 1910.120, 1910.157, 1910.268, 1910.272, 1910.147, 1910.1050, and 1910.1051.

Any omissions or corrections to the occupational safety and health standards being considered for adoption published in the FEDERAL REGISTER prior to this hearing may be presented at this hearing. These revisions are necessary to comply with federal law and copies of them can be obtained or reviewed at the S.C. Department of LLR during normal business hours by contacting the Public Information Office at (803) 896-4380.

6 NOTICES

Persons desiring to speak at the hearing shall file with the Director of LLR a notice of intention to appear and the approximate amount of time required for her/his presentation on the particular matter no later than February 24, 2003. Any person who wishes to express her/his views, but is unable or does not desire to appear and testify at the hearing, should submit those views to the undersigned in writing on or before February 24, 2003.

Rita M. McKinney
Director
SC Department of LLR
Post Office Box 11329
Columbia, SC 29211-1329

Document No. 2824
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-2-10 and 13-7-45 et seq.

R.61-30. *Environmental Protection Fees*

Preamble:

R.61-30, *Environmental Protection Fees*, was promulgated June 23, 1995, pursuant to the Environmental Protection Fund Act of 1993, S.C. Code Section 48-2-10 *et seq.* This regulation prescribes those fees applicable to applicants and holders of permits, license, certificates, certifications, permits, and establishes schedules for timely action on permit applications. This regulation also establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation of applicability. The Department is proposing to amend R.61-30 by increasing fees for specific radioactive material licenses and by adding fees for general licenses and reciprocity licenses. Legislative review will be required.

A Notice of Drafting for this amendment was published in the *State Register* on July 26, 2002. See discussion of proposed revisions below and a fiscal impact statement and a statement of need and reasonableness provided herein.

Discussion of Proposed Revisions:

Increase fees for Radioactive Material Licenses and adds fees for reciprocity licenses and general licenses specified in R.61-63:

<u>SECTION</u>	<u>REVISION</u>
61-30.G(5)	Introductory heading at 61-30.G(5) is revised for radioactive material licenses to add fees for all reciprocity licenses and fees for general licenses specified by R.61-63
61-30.G(5)(i)	Fee increase for irradiator (unshielded)
61-30.G(5)(j)	Fee increase for irradiator (self-contained)
61-30.G(5)(k)	Fee increase for large quantity source material. Heading is also revised to add word "Material" to Large Quantity Source for clarification
61-30.G(5)(l)	Fee increase for industrial radiography (in-plant only)
61-30.G(5)(m)	Fee increase for industrial radiography (temporary field site)
61-30.G(5)(n)	Delete fee for industrial radiography under reciprocity – this fee is now included in 61-30.G(5) above
61-30.G(5)(o)	Fee increase for general license for distribution
61-30.G(5)(p)	Fee increase for medical institution
61-30.G(5)(q)	Fee increase for teletherapy
61-30.G(5)(r)	Fee increase for industrial gauges

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61-30.G(5)(s) Fee increase for Laboratories-Commercial/Medical

61-30.G(5)(t) Fee increase for educational institution

61-30.G(5)(u) Fee increase for nuclear pharmacy

61-30.G(5)(v) Fee increase for medical private practice

61-30.G(5)(w) Fee increase for moisture/density gauge

61-30.G(5)(x) Fee increase for gas chromatograph

61-30.G(5)(y) Fee increase for services/consultants

61-30.G(5)(z) Fee increase for bone mineral analyzer

61-30.G(5)(aa) Fee increase for eye applicator

61-30.G(5)(bb) Fee increase for medical academic broad license

61-30.G(5)(cc) Fee increase for well logging

61-30.G(5)(dd) Fee increase for mobile scanning services

61-30.G(5)(ee) Fee increase for decontamination/nuclear laundry

61-30.G(5)(ff) Fee increase for All Other

Sections 61-30.G(5)(I) through 61-30.G(5)(ff) will be renumbered as 61-30.G(5)(i) through G(5)(ee).

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public to attend a staff-conducted informational forum to be held on February 24, 2003, at 10:00 a.m. in the Peoples Auditorium at the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The purpose of this forum is to answer questions, clarify issues, and receive public comment on the proposed revisions. Comments received shall be submitted to the Board of Health and Environmental Control for consideration at the public hearing scheduled for March 13, 2003.

Interested persons are also provided an opportunity to submit written comments to Pearce O'Kelley, Chief, Bureau of Radiological Health at South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. Written comments must be received no later than 4:00 p.m. February 24, 2003. Comments received by the deadline date will be considered in formulating the final proposed amendment for public hearing before the Board of Health and Environmental Control as noticed below. Comments received shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

Copies of the proposed regulation for public notice and comment may be obtained by contacting James Peterson at South Carolina Department of Health and Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 545-4400.

Notice of Board Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-110(A)(3) and 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on March 13, 2003, to 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, 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 order of presentation for public hearings will be noted in the Board's agenda to be published by the Department ten days 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.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Pearce O'Kelley, Chief, Bureau of Radiological Health, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 545-4400. Comments must be received no later than 4:00 p.m. on February 24, 2003. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing on March 13, 2003, as noticed above. Comments received by the deadline shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

Copies of the proposed regulation for consideration at the public hearing before the Board may be obtained by contacting James Peterson at South Carolina Department of health and Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, SC 29201 or by calling (803) 545-4400.

Preliminary Fiscal Impact Statement:

No additional cost will be incurred by the State or its political subdivisions by the implementation of this amendment. 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 the requirements or changes to the regulation will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-30, *Environmental Protection Fees*, was promulgated June 23, 1995, pursuant to the Environmental Protection Fund Act of 1993, S.C. Code Section 48-2-10 *et seq.* This regulation prescribes those fees applicable to applicants and holders of permits, licenses, certificates, certifications, permits, and establishes schedules for timely action on permit applications. This regulation also establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation of applicability.

Purpose: The Department is proposing amendment of R.61-30 to increase fees for Radioactive Materials Licenses and add fees for general licensees and reciprocity licensees.

Legal Authority: S.C. Code Sections 48-2-10 and Atomic Energy and Radiation Control Act 13-7-45 *et seq.*

Plan for Implementation: The proposed amendments would be incorporated within R.61-30 upon approval of the Board of Health and Environmental Control and the General Assembly, and publication in the

10 PROPOSED REGULATIONS

State Register. The proposed 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:

Increase fees for Radioactive Materials Licenses and add fees for general licensees and reciprocity licensees. Radioactive Materials Licenses (administered by the Bureau of Radiological Health, Office of Health Regulation). Even with the increase, South Carolina's fees will remain lower than other Southeastern states and the U.S. Nuclear Regulatory Commission (NRC). Training, which was previously funded by the NRC is still required but no longer federally funded. The Department is required by statute (Section 13-7-45, S.C. Code) to set fees in an amount to fund the program. *Radioactive Material Licenses administered by the Land and Waste Management Bureau of the Office of Environmental Quality Control are excluded from this proposal.* Also, increases are needed to cover increased program costs due to required increases in security of licensed materials.

DETERMINATION OF COSTS AND BENEFITS:

Increase fees for specific Radioactive Materials Licenses and add fees for general licensees and reciprocity licensees. South Carolina is an Agreement State, and as such, the U.S. Nuclear Regulatory Commission (NRC) has relinquished authority to the State to regulate the use of radioactive materials. However, the NRC requires that individuals employed by Agreement States who license and inspect facilities utilizing radioactive material, successfully complete certain specified training courses as well as attend certain continuing education courses. Prior to 1996, NRC funded this training. It is now the State's responsibility to fund this training entirely, with tuition cost for some courses ranging as high as \$7125.

Operating funds for existing positions require increases due to the fact that there have been no adjustments in this area to account for inflation or to account for the need in new purchases of radiation detection instrumentation and other necessary equipment for staff use. The Bureau of Radiological Health has experienced cuts in operating funds over time which has further increased the problem in this area. Additional monies from fee increases would also allow the Bureau to have the ability to provide salary increases to deserving personnel in an effort to promote staff retention. Also, additional funds are needed to address required increases in security of radioactive materials in light of recent terrorist events.

The Bureau has also recently incurred laboratory costs for the analysis of various radiological samples collected by inspectors. Previously, all samples collected by the Bureau were analyzed in the SC DHEC Radiological Laboratory. Due to this laboratory now being unable to provide certain of the required services, some samples must be taken to private laboratories for analysis.

With the proposed increase, South Carolina's fees for radioactive material licenses are still approximately 30% lower than the fee averages for licenses in the surrounding states of North Carolina, Georgia and Florida, and will be about one-half the fees charged for identical licenses by the USNRC. The proposed fee increase should create enough money to adequately cover program costs, including staff training. The Atomic Energy and Radiation Control Act requires the Department to recover all costs associated with the program through fees.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties associated with the proposed amendments to R. 61-30.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There is no effect increasing fees for radioactive material licenses.

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

A greater risk of public exposure exists if the program is not able to carry out timely and thorough inspections with a well trained staff of inspectors. Federal Law requires this program to operate at a specific level of activity and with trained personnel.

Statement of Rational Pursuant to S.C. Code Section 1-23110(A)(3)(h):

This is an administrative decision by the Department to amend R.61-30. See Statement of Need and Reasonableness above for more detailed information.

Text of Proposed Amendment:

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. 2825
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 13-7-10, 13-7-40 and 13-7-45 et seq. and Supplement

R.61-64, *X-Rays (Title B)*

Preamble:

The Department proposes to revise R.61-64, *X-Rays (Title B)*, Sections 2.31, 2.3.2, 2.10.6 and 11.3. These fees are for the application fee; shielding plan review fee; annual and pro-rated x-ray equipment and vendor fees; and, survey instrument calibration. The fee increases are needed due to the mandate, under the Atomic Energy and Radiation Control Act, to recover the cost of the program through the collection of fees..

A Notice of Drafting was published in the State Register on July 26, 2002. Comments were considered in formulating the proposed revisions. See Discussion of Proposed Revisions below and Statement of Need and Reasonableness herein.

Discussion of Proposed Revisions

<u>SECTION</u>	<u>REVISION</u>
R.61-64.2.3.1	Revised to add the increase of the application fee.
R.61-64.2.3.2	Revised to add the increase of the shielding plan review fee.
R.61-64.2.10.6	Revised to add the increase of the annual fees.
R.61-64.11.3	Revised to add the increase of the calibration fees.

Notice of Staff Informational Forum

Staff of the Department of Health and Environmental Control invite interested members of the public and the regulated community to attend a staff-conducted informational forum to be held on February 24, 2003, at 10:00 a.m. in the Peoples Auditorium, third floor of the Sims Building at the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The purpose of the forum is to answer questions, clarify issues, and receive public comments on the proposed revisions. Comments received shall be submitted to the

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Board of Health and Environmental Control for consideration at the public hearing scheduled below for March 13, 2003, pursuant to S.C. Code Sections 1-23-110 and 1-23-111.

Copies of the proposed amendment of R.61-64 *for public notice and comment* may be obtained by contacting Aaron A. Gantt at the South Carolina Department of Health and Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, S.C. 29201, or by calling (803) 545-4400.

Notice of Board Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendments of R.61-64 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on March 13, 2003, to 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, 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 order for presentations for public hearing will be noted in the Board's agenda to be published by the Department ten hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statement to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to Aaron A. Gantt at the South Carolina Department of Health and Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, S.C. 29201, or by calling (803) 545-4400. Comments received by February 24, 2003, the deadline shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing.

Copies of the proposed regulation for public hearing may be obtained by contacting Aaron A. Gantt at South Carolina Department of Health and Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, S.C. 29201, or by calling (803)545-4400.

Preliminary Fiscal Impact Statement:

There will be a cost to the state and its political subdivision registrants with the implementation of the proposed amendments due to the proposed increase in fees. The fees have only been increased once since 1993. The 1993 increase in fees was based on costs to the program in 1991. Since 1991, the inflation rate has increased 22.7%. Examples of the increase are from \$50 to \$62.50 per year for a dental unit and from \$80 to \$100 per year for a medical radiographic unit. The Department also proposes to increase from \$50 to \$62.50 application fees for new facilities. In addition, the Department proposes to increase fees from \$50 to \$62.50 for shielding plan reviews and increase fees from \$125 to \$156.25 for vendors who sell, install and service x-ray equipment.

The fees for calibration of x-ray equipment, which have only been increased once since 1993, will be increased to account for the increased inflation rate. Even with the increase, our fees will remain less than those charged by commercial calibration facilities.

Even after these increases, the annual fees for the use of x-ray equipment in South Carolina will be below the Southeastern average.

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 61-64, X-Rays (Title B), Rules and Regulations for Radiation Control.

Purpose: The Department proposes to revise R.61-64, X-Rays (Title B) Sections 2.3.1, 2.3.2, 2.10.6 and 11.3. These fees are for the application fee; shielding plan review fee; annual and pro-rated x-ray equipment and vendor fees; and, survey instrument calibration. The fee increases are needed due to the mandate, under the Atomic Energy and Radiation Control Act, to recover the cost of the program through the collection of fees.

Legal Authority: R.61-64, *X-Rays (Title B)* is authorized by S.C. Code Section 13-7-45 *et seq.* and Supplement.

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61-64 upon approval of the Board of Health and Environmental Control, the General Assembly and publication in the State Register. The proposed amendments will be implemented by providing the regulated community with copies of the regulation.

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

The changes are needed in order to address the training needs associated with technological advances with new modalities in radiology, the need to adequately equip staff with radiation measurement and detection equipment, and to recover increases in operating costs.

The proposed changes are reasonable because they will be implemented with existing staff and are normally set to only recover the costs of operating the program as required by the Atomic Energy and Radiation Control Act.

DETERMINATION OF COSTS AND BENEFITS:

There will be a small cost to the state and its political subdivision registrants with the implementation of the proposed amendments due to the proposed increase in fees. The fees have only been increased once since 1993. The 1993 increase in fees was based on costs to the program in 1991. Since 1991, the inflation rate has increased 22.7%. Examples of the increase are from \$50 to \$62.50 per year for a dental unit and from \$80 to \$100 per year for a medical radiographic unit. The Department also proposes to increase fees from \$50 to \$62.50 application fees for new facilities. In addition, the Department proposes to increase fees from \$50 to \$62.50 for shielding plan reviews and increase fees from \$125 to \$156.25 for vendors who sell, install and service x-ray equipment.

The fees for calibration of x-ray equipment, which have only been increased once since 1993, will be increased to account for the increased inflation rate. Even with the increase, our fees will remain less than those charged by commercial calibration facilities.

Even after these increases, the annual fees for the use of x-ray equipment in South Carolina will be below the Southeastern average.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect upon the environment or upon the public health of the citizens of the state.

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

There will be no detrimental effects on the environmental if these changes are not implemented. However, in order to continue providing the level of service and support to our registrants, the fee increase is necessary. In addition, our role in protecting the public and workers from the adverse effects of radiation is very important and worthwhile.

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 changes are needed in order to provide the necessary knowledge and skills to keep abreast of advances in technology, especially in the medical field, which requires us to receive the latest training in order to effectively, regulate and support these uses of radiation. In response to the events of September 11, 2001, the federal government is placing more responsibilities on the states regarding radiation security issues with no support for training and equipment, but yet they still require our program to be adequately trained and equipped. Increased costs of operation are required to be recovered by the Atomic Energy and Radiation Control Act.

Text:

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

Document No. 2823

DEPARTMENT OF INSURANCE

CHAPTER 69

Statutory Authority: 1976 Code Section 38-79-430

69-65. South Carolina Patients' Compensation Fund

Preamble:

The Board of Governors of the South Carolina Patients' Compensation Fund proposes to create Article II of Chapter 69, Regulation 69-65, South Carolina Patients' Compensation Fund (Fund).

Notice of Public Hearing and Opportunity for Public Comment:

The Administrative Law Judge Division will conduct a public hearing for the purpose of receiving oral comments on Monday, February 24, 2003 at 10:00 a.m. at 1205 Pendleton Street, Columbia, South Carolina. Interested parties should submit their views in writing to: Melanie A. Joseph, Executive Assistant to the Director/Legislative Liaison, S.C. Department of Insurance, Post Office Box 10015, Columbia, South Carolina 29202-3105 on or before Friday, February 14, 2003 .

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

The Board of Governors of the South Carolina Patients' Compensation Fund proposes to create Article II of Chapter 69, Regulation 69-65, South Carolina Patients' Compensation Fund (Fund) in order to address revisions to the Fund's Plan of Operations related to the purpose and powers of the Fund; indemnification for members of the Board of Governors; audit authority and requirements; conflicts of interest and appeals.

State of Rationale:

The Statement of Rationale is available upon request from Melanie A. Joseph, Executive Assistant to the Director, Department of Insurance, P. O. Box 10015, Columbia, SC 29202-3105.

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. 2826
DEPARTMENT OF REVENUE
 CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

117-302.5 Machines

Preamble:

The South Carolina Department of Revenue is considering amending SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)). This additional information will state the following:

The general rule with reference to material handling machinery and/or mechanical conveyors is that such machinery is subject to the tax up to the point where the materials go into process. The machine feeding the first processing machine(s) is exempt. The last machine to come within the exemption is that machine which discharges the finished product from the last machine used in the process. Material handling machinery used for transporting (in process) material from one process stage to another comes within the exemption. Warehouse machinery used only for warehouse purposes, loading and unloading, storing, transporting raw materials and finished products, etc., is subject to the tax, unless exempt under the provisions of Code Section 12-36-2120(51). If material handling machinery is customarily used for a dual purpose, that is partly for an exempt purpose and partly for a taxable purpose, and is not otherwise exempt under the provisions of Code Section 12-36-2120(51), the machinery may be purchased free of the tax under the machine exemption (Code Section 12-36-2120(17)) provided the exempt use represents a substantial portion of its use.

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Discussion

The South Carolina Department of Revenue is considering amending SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)).

Notice of Public Hearing and Opportunity for Public Comment:

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Judge Division at the Administrative Law Judge Division in the Edgar Brown Building on the Capitol Complex (1205 Pendleton Street, Suite 224) in Columbia, South Carolina for March 24, 2003 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 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)). The department will be asking the Administrative Law Judge Division, in accordance with S.C. Code Ann. Section 1-23-111 (2000), to issue a report that this proposal is needed and reasonable.

Comments:

All comments concerning this proposal should be mailed to the following address by February 24, 2003:

S.C. Department of Revenue
Legislative Services - Mr. Meredith Cleland
P.O. Box 125
Columbia, South Carolina 29214

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:

The proposal to amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors so as to incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5, and the provisions of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)) is needed to reduce any taxpayer confusion that may result from having inadvertently deleted the provisions of former SC Regulation 117-174.134 during the drafting process last year of

SC Regulation 117-302.5. The proposal is also reasonable in that it was the intent of last year's reorganization of the sales and use tax regulations to continue longstanding policy as set forth in the former regulations and as established by the courts and by recent legislation of the General Assembly.

Summary of the Preliminary Assessment Report:

The purpose of this proposal is to amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)).

Preliminary Assessment Report:

Under the provisions of law governing the preliminary assessment report (Code Section 1-23-115), the SC Department of Revenue will address items (1) through (3) of Code Section 1-23-115(C) as follows:

1. The purpose of this proposal is to amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)). The Department of Revenue will implement this proposal in the same manner as it implements all other regulations.

2. The proposal to amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors so as to incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5, and the provisions of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)) is needed to reduce any taxpayer confusion that may result from having inadvertently deleted the provisions of former SC Regulation 117-174.134 during the drafting process last year of SC Regulation 117-302.5. The proposal is also reasonable in that it was the intent of last year's reorganization of the sales and use tax regulations to continue longstanding policy as set forth in the former regulations and as established by the courts and by recent legislation of the General Assembly.

3. This proposal will benefit taxpayers because it will reduce any taxpayer confusion by continuing via the new reorganized regulations longstanding policy as set forth in the former regulations and as established by the courts and by recent legislation of the General Assembly. This proposal is cost effective for the same reasons.

Under the provisions of law governing the preliminary assessment report (Code Section 1-23-115), the SC Department of Revenue will address items (9) through (11) of Code Section 1-23-115(C) as follows:

9. There is very little uncertainty associated with estimating the benefits of this regulation. All individuals would be similarly treated by these provisions.

10. The proposed regulation would not have any effect on the environment and public health.

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11. If the proposed regulation is approved, there would not be a detrimental effect on the environment and public health.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors. This additional information will incorporate the provisions of former SC Regulation 117-174.134, which were inadvertently deleted during the drafting process last year of SC Regulation 117-302.5. However, the provisions of this former regulation will be modified by the requirement of Hercules Contractors and Engineers, Inc. v. S. C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) that a machine must be substantially used in manufacturing tangible personal property for sale in order to qualify for the exemption at Code Section 12-36-2120(17) and to address recent legislation concerning material handling systems (Code Section 12-36-2120(51)).

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.