

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 803-734-2145.

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) 734-2145

Published July 23, 2004

Volume 28 Issue No.7

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.

2004 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	1/9	2/13	3/12	4/9	5/14	6/11	7/9	8/13	9/10	10/8	11/12	12/10
Publishing Date	1/23	2/27	3/26	4/23	5/28	6/25	7/23	8/27	9/24	10/22	11/26	12/24

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.

SUBSCRIPTIONS

Subscriptions to the *South Carolina State Register* are available electronically through the South Carolina Legislature Online website at 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 \$95.00. 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 \$95 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) 734-2145

TABLE OF CONTENTS

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

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

EXECUTIVE ORDERS

No. 2004-13 Probate Judge of Orangeburg County Appointed	2
---	---

NOTICES

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Certification of Need	3
Interbasin Transfer of Water from Edisto River Basin to the Lower Savannah River Basin	4
Underground Storage Tanks.....	5

DRAFTING NOTICES

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Hotel - Motel Sanitation.....	6
Licensing Tattooing Facilities	6
Mobile Home Parks.....	7
Pasteurized Milk and Milk Products	7

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Medicaid Provider Policies	8
----------------------------------	---

REVENUE, DEPARTMENT OF

Property Tax	9
Sales and Use Tax Exemption for Machines.....	9

PROPOSED REGULATIONS

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Document No. 2913 Air Pollution Control Regulations and Standards	11
--	----

REVENUE, DEPARTMENT OF

Document No. 2914 Electric Power Tax	15
Document No. 2915 Sales and Use Tax	16

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

DOC No.	RAT FINAL No. ISSUE	SUBJECT	EXP. DATE	AGENCY
2886		Pilot and Apprentice Age Limitations and Pilot Registration	1/11/05	LLR: Commissioners of Pilotage
2887		Residential Builders Commission	1/11/05	LLR: Residential Builders Commission
* 2753		LIFE Scholarship Program	1/15/05	Commission on Higher Education
2889		Barrier Free Design, Building Codes Council	1/17/05	LLR: Building Codes Council
2890		Chapter Revisions	1/17/05	LLR: Manufactured Housing Board
2873		Air Pollution	1/30/05	Department of Health and Envir Control
* 2800		Environmental Protection Fees	2/27/05	Department of Health and Envir Control
2905		Credit for Reinsurance	3/14/05	Department of Insurance
2900		Student Attendance	3/22/05	Board of Education
2897		State Primary Drinking Water	3/28/05	Department of Health and Envir Control
2908		Continuing Insurance Education	4/03/05	Department of Insurance
2906		Repeal Video Poker Regulations	4/03/05	Department of Revenue
2907		ABL - Drive Thru Prohibited	4/03/05	Department of Revenue
2909		Adoption of National Explosives Standards	4/03/05	LLR: Office of State Fire Marshal
2899		Certification Program for Public Librarians	4/10/05	State Library
* 2801		Individual Sewage Treatment and Disposal Systems	4/19/05	Department of Health and Envir Control
2903		Total Maximum Daily Loads for Pollutants in Water	4/24/05	Department of Health and Envir Control
2901		Child Care Centers Licensing Regulations	5/08/05	Department of Social Services
** 2871	R.435 6/7/04	Water Quality Certification		Department of Health and Envir Control
** 2629	R.404 6/7/04	Specific Project Stds for Tidelands & Coastal Waters		Department of Health and Envir Control

* Resolutions to disapprove not enacted during 2004 Session

** Resolutions to disapprove enacted during 2004 Session pending Governor's signature

2 EXECUTIVE ORDERS

2004-13

WHEREAS, Vivian Ross-Bennett has resigned as Orangeburg County Probate Judge, effective July 1, 2004; and

WHEREAS, the undersigned is authorized to appoint a Probate Judge in the event of a vacancy pursuant to Section 14-23-50 of the South Carolina Code of Laws; and

WHEREAS, Pandora LaShawn Jones residing at 1316 Sifly Road, Orangeburg, South Carolina 29118, is a fit and proper person to serve as a Probate Judge of Orangeburg County.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Pandora LaShawn Jones as Probate Judge of Orangeburg County for the unexpired term and until her successor shall qualify.

**GIVEN UNDER MY HAND AND THE GREAT SEAL
OF THE STATE OF SOUTH CAROLINA, THIS 24th
DAY OF JUNE, 2004.**

**MARK SANFORD
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 July 23, 2004, 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

Asset purchase of Charleston Plastic Surgery Center, an existing licensed ambulatory surgery center with two (2) general operating rooms, by Roper Hospital, Inc.

Charleston Plastic Surgery Center

Charleston, South Carolina

Project Cost: \$1,870,000

Lease of a 1.5T Magnetic Resonance Imaging (MRI) unit.

Neurosciences Magnetic Resonance Imaging Center, LLC

Charleston, South Carolina

Project Cost: \$1,810,650

Affecting Greenville County

Renovation and expansion of the Emergency Trauma Center (ETC).

Greenville Memorial Hospital

Greenville, South Carolina

Project Cost: \$11,177,671

Upgrade of an existing non-spiral, Single-Slice Computed Tomography (CT) scanner to a multi-slice CT scanner.

Greenville Memorial Hospital

Greenville, South Carolina

Project Cost: \$1,229,153

Affecting Lancaster County

Addition of six (6) inpatient substance abuse beds and two (2) inpatient medical detoxification beds.

Springs Memorial Hospital

Lancaster, South Carolina

Project Cost: \$-0-

Affecting Spartanburg County

Establishment of a 12-bed inpatient hospice facility.

The Hospice Home of Grace

Duncan, South Carolina

Project Cost: \$3,590,000

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 July 23, 2004. "Affected persons" have 30 days from the above date to submit comments or requests

4 NOTICES

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 Beaufort County

Establish an outpatient narcotic treatment program to be located at 1 Sheridan Park, Bluffton, South Carolina 29910 (Methadone Treatment Center).

Choices, Inc.

Bluffton, South Carolina

Project Cost: \$841,819

Affecting Greenville County

Construction for the addition of eleven (11) Psychiatric beds, for a total of sixty-four (64) Psychiatric beds and thirteen (13) Substance Abuse Beds.

Carolina Center for Behavioral Health

Greer, South Carolina

Project Cost: \$1,183,388

Affecting Jasper County

Construction for the addition of a Magnetic Resonance Imaging (MRI) unit.

Coastal Carolina Medical Center

Hardeeville, South Carolina

Project Cost: \$3,201,000

Establish an outpatient narcotic treatment program to be located at 124 Boardwalk Drive, Unit A, Oakatie, South Carolina 29909 (Methadone Treatment Center).

Recovery Concepts, LLC

Oakatie, South Carolina

Project Cost: \$218,255

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Public Notice

Pursuant to S.C. Code Section 49-21-40 and R. 121-12.7, the South Carolina Department of Health and Environmental Control gives notice that the City of Aiken has filed a Class I Interbasin Transfer Application to transfer water from the Edisto River basin to the Lower Savannah River basin. The Interbasin Transfer Application is for renewal of an existing Interbasin Transfer Registration of 10 million gallons per day that expires November 15, 2005. Raw water is withdrawn from Shaw Creek in the Edisto River basin and treated at the Shaw Creek Water Treatment Plant and distributed to the City of Aiken service area which lies in both the Edisto and the Lower Savannah River basins. Wastewater from the City of Aiken service area is treated at Aiken County Horse Creek Regional Wastewater Treatment Plant and discharged to the Savannah River. The requested duration of the permit is for twenty (20) years to withdraw a daily average of 8.0 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 he or she 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 November 9, 2004. 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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC 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. 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 individuals listed below, please submit your comments in writing, no later than August 23, 2004 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Underground Storage Tank Program
Attn: Barbara Boyd
2600 Bull Street
Columbia, SC 29201

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

Class I

Class II

Fruits & Associates, Inc.

6 DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-140(11); 1-23-10; -110

Notice of Drafting:

The Department of Health and Environmental Control proposes to repeal R.61-41, Hotel – Motel Sanitation. Interested persons may submit comments to Mr. H. Michael Longshore, Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on August 24, 2004, the close of the drafting comment period.

Synopsis:

This regulation was last revised in 1984. The requirements and need for R.61-41 are outdated and obsolete. Due to dwindling resources and prioritization of programs, the Department has not routinely inspected hotels and motels under this regulation in over 10 years; the Department continues to investigate complaints in hotels and motels. Furthermore, the hotel – motel industry has become largely self-regulating; the business is very customer-driven and competition dictates that facilities be maintained and operated properly. The public health concerns that the R.61-41 was intended to address can be addressed through other department regulations, such as R.61-56, Individual Sewage Treatment and Disposal Systems, and R.61-46, Nuisances. Since this regulation is no longer needed, and in the interest of good government and efficiency, the Department proposes repeal of R.61-41. Public notification of this proposed regulation revision will be published pursuant to the Administrative Procedures Act. Legislative review of this proposal is required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: Section 44-34-10, *et seq.*
(Act 250, June 17, 2004)

Notice of Drafting:

The Department of Health and Environmental Control proposes to draft new regulations establishing standards for tattooing facilities. Interested persons may submit written comments to Dennis L. Gibbs, Director, Division of Health Licensing, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, all comments must be received no later than 5:00 p.m., August 26, 2004, the close of the drafting comment period.

Synopsis:

By Act 250 effective June 17, 2004, a tattooing chapter was added to the S.C. Code of Laws at Section 44-34-10 *et seq.* The law established requirements and procedures for tattooing, including provisions for the issuance of the promulgation of regulations by the Department of Health and Environmental Control, payment of license fees, and conducting inspections. The proposed regulation will include, but not be limited to: definitions; licensing requirements; fees required; exceptions to the regulation; inspection and investigating reporting requirements; consultations; enforcement action procedures and penalties; facility/staff policy/procedures; staffing, including inservice training and health status; reporting requirements; client record content and maintenance; client procedures and services; client rights; grievance and complaint procedure; facility maintenance; infection control and equipment sterilization including housekeeping; hepatitis B vaccination requirements; infectious waste; emergency procedures; fire prevention; facility accommodations; mobile units; and a severability clause. Legislative review of this proposal will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-140(11); 1-23-10; -110

Notice of Drafting:

The Department of Health and Environmental Control proposes to repeal R.61-40, Mobile Home Parks. Interested persons may submit comments to Mr. H. Michael Longshore, Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, comments must be received no later than 5:00 p.m. on August 24, 2004, the close of the drafting comment period.

Synopsis:

This regulation was last revised in 1986. The requirements and need for R.61-40 are outdated and obsolete. Local zoning and code enforcement has addressed the requirements covered in this regulation, and in most areas, are more stringent than the regulation. Due to dwindling resources and prioritization of programs, the Department has not routinely inspected mobile home parks under this regulation in over 10 years; the Department continues to investigate complaints in mobile home parks. However, the public health concerns that the regulation was intended to address can be addressed through other department regulations, such as R.61-56, Individual Sewage Treatment and Disposal Systems, and R.61-46, Nuisances. Since this regulation is no longer needed, and in the interest of good government and efficiency, the Department proposes repeal of R.61-40. Public notification of this proposed regulation revision will be published pursuant to the Administrative Procedures Act.

Legislative review of this proposal is required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 39-37-120, 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control proposes to substantially amend R.61-34.1, *Pasteurized Milk and Milk Products*. Interested persons should submit comments to Joe Neely, Division of Food Protection (Dairy Foods and Soft Drink/Bottled Water Protection Program), Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201-1708. All comments must be received by 5:00 p.m. on August 24, 2004, the close of the drafting comment period.

Synopsis:

R.61-34.1 ensures that consumers are receiving safe, high quality Grade "A" milk and milk products. The Regulation was amended last in 1993. The proposed amendments will bring the Regulation into compliance with the latest guidelines of the Interstate Milk Shipments Conference Pasteurized Milk Ordinance and assure consumers that the latest sanitation requirements are being met by the dairy industry. Also, the United States Public Health Service, Food and Drug Administration (FDA) requires that South Carolina's dairy regulation be at least as stringent as the Pasteurized Milk Ordinance in order for South Carolina milk producers and processors to ship their products in interstate commerce and market them as Grade "A." The FDA has previously cited the South Carolina program for not meeting this requirement. Amendments will also insure that the regulation complies with the requirements of the federal Nutrition Labeling and Education Act, the

8 DRAFTING

federal Food, Drug and Cosmetic Act, and the South Carolina Administrative Procedures Act, and is compatible with R.61-36, *Frozen Desserts*. The Department also plans to amend the source water supply criteria for regulated facilities to be consistent with R.61-58, *State Primary Drinking Water Regulations*. The Department may make other changes as necessary to improve the overall quality of the regulation. Public notification of this proposed regulation revision will be published pursuant to the Administrative Procedures Act.

Legislative review of this proposal is required.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 126-425

Statutory Authority: 1976 Code Section 44-6-90

Notice of Drafting:

The South Carolina Department of Health and Human Services (DHHS) intends to amend regulations concerning its Medicaid provider policies. The proposed amendments are being made to add specificity to provider conditions of participation and to enhance the South Carolina Medicaid program's ability to curtail wasteful, unnecessary, abusive, and potentially fraudulent activities by certain providers. DHHS is enhancing its ability to identify overpayments made to providers and is implementing procedures to specify record retention policies, define a recoupment, conduct analyses to identify overpayments, implement procedures to collect overpayments, and implement procedures to impose interest and sanctions on providers after considering information submitted by a provider. Interested persons may submit comments in writing or request a copy of the proposed amendments by contacting to Ms. Julie Cook, Director, Division of Program Integrity, 1801 Main Street, Suite M112, Columbia, South Carolina 29202. To be considered, all comments must be received no later than the close of business on July 26, 2004.

Synopsis:

The proposed amendments at Subarticle 2, Chapter 126-425 1) define "recoupment" and "sanction"; 2) define DHHS's record retention policies and require providers to maintain records sufficient to document the amount, scope, and duration of the service for a minimum of five (5) years; 3) permit DHHS to collect overpayments from providers for up to five (5) years from the date a claim was paid; 4) specify DHHS's review activities and process, including sampling of provider records; 5) provide circumstances, conditions, and provider actions that may lead to the collection of overpayments and imposition of sanctions by DHHS; 6) specify the process for notifying providers of overpayments; and 7) specify actions by a provider that may lead to immediate sanctions imposed on a provider by DHHS. These policies and procedures have a vital role in assisting the Department in curtailing potential overpayments, and eliminating unnecessary and wasteful payments to providers.

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

Notice of Drafting:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-8 concerning responsibilities of the Department of Revenue with respect to property taxation and fees in lieu of property taxes. Since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1, SC Regulation 117-8 is no longer needed.

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 August 24, 2004.

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-8 concerning responsibilities of the Department of Revenue with respect to property taxation and fees in lieu of property taxes. Since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1, SC Regulation 117-8 is no longer needed.

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

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-302.5 which concerns the sales and use tax exemption for machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale.

During 2003, South Carolina courts decided two cases which clarify what qualifies as “machines used in manufacturing” for purposes of the South Carolina sales and use tax machine exemption. These cases are Springs Industries, Inc. v. SCDOR (99-ALJ-17-0153-CC) and Anonymous Taxpayer v. SCDOR (02-ALJ-17-0350-CC). Previously, the Department adhered to the “Production Line Theory” in determining what machinery was used in manufacturing. Under this theory, items were found to be exempt only if “used directly” in the manufacturing process. Based upon the recent court decisions, the “Production Line Theory” will no longer be used. Instead, the court mandated machinery is exempt if such machinery is “integral and necessary” to the manufacturing process. This change is generally less restrictive than the Department’s prior interpretation. As such, machines that the Department would previously have held subject to the tax are exempt. However, it is important to note that the determination hinges on whether a machine is “integral and necessary” to the manufacturing process, not whether it is “integral and necessary” to the manufacturer. As such, machines used solely for warehouse, distribution, or administrative purposes do not come within the machine exemption. The case of Anonymous Taxpayer v. SCDOR (02-ALJ-17-0350-CC) dealt with the issue of whether buildings or parts of buildings could be exempt under the machine exemption. Considering the principles previously held in Hercules Contractors and Engineers Inc. v. S.C. Tax Comm’n, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984), the court held that the buildings in question did not function as machines and were not exempt under the machine exemption. Although the decision in this case is consistent with how the Department has historically viewed the exemption of buildings, it is significant in that it utilizes the “necessary and integral” methodology to show that the exemption after Springs is limited to “machines” which are

10 DRAFTING

integral and necessary to the manufacturing process and does not encompass all items useful to a manufacturer.

As a result of these two court decisions, the Department issued an advisory opinion, SC Revenue Ruling #04-7. This proposal to amend SC Regulation 117-302.5 will combine the guidance provided in the advisory opinion, which is based on the two court cases, with provisions of the present regulation that are still applicable under these two court decisions.

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 August 24, 2004.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-302.5 which concerns the sales and use tax exemption for machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. As a result of two recent court decisions, the Department issued an advisory opinion, SC Revenue Ruling #04-7. This proposal to amend SC Regulation 117-302.5 will combine the guidance provided in the advisory opinion, which is based on the two court cases, with provisions of the present regulation that are still applicable under these two court decisions.

Document No. 2913
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
 Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Regulation 61-62, *Air Pollution Control Regulations and Standards*

Preamble:

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60, 63, and 70 throughout each calendar year. Recent federal amendments include clarification, guidance and technical amendments regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and State Operating Permits Program. The Department proposes to amend Regulations 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, also known as Maximum Achievable Control Technology (MACT); and 61-62.70, *Title V Operating Permit Program*, to incorporate recent federal amendments promulgated during the period from January 1, 2003, through December 31, 2003.

The Department also proposes to add a new *Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)*. Prior to the promulgation of MACT standards for source categories, EPA promulgated emission standards for specific hazardous air pollutants in 40 CFR Part 61 NESHAP. The Department proposes to incorporate by reference into this new regulation, R.61-62.61, the general requirements and emission standards that have been promulgated in 40 CFR Part 61 for which the Department requested and received delegation of authority to implement and enforce. In addition, the Department proposes to incorporate recent Federal amendments to 61-62.68, *Chemical Accident Prevention Provisions*, promulgated April 9, 2004, to amend the reporting requirements of its chemical accident prevention regulations.

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, are necessary to maintain consistency with Federal rules and will not require legislative review.

A Notice of Drafting for these proposed changes was published in the *State Register* on April 23, 2004. Since this amendment is consistent with Federal law, neither a preliminary fiscal impact statement nor a preliminary assessment report is required.

Discussion of Proposed Revisions:

SECTION CITATION:

EXPLANATION OF CHANGE:

R. 61-62.60

Amended tables in Subparts A, Ec, Kb, GG, and XX to incorporate references for revisions which became effective in 2003.

R. 61-62.61

Subparts B, C, D, E, F, H, I, J, K, L, M, N, O, P, Q, R, T, V, W, Y, BB, FF, Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E are added to incorporate by reference regulations for which the Department has been delegated the authority to implement and enforce.

R. 61-62.63

Revised existing tables in Subparts A, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, VV, YY,

12 PROPOSED REGULATIONS

CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, XXX, SSSS, and XXXX in alpha-numeric order to incorporate by reference revisions which became effective in 2003.

R. 61-62.63

Added new tables in Subparts AAAA, FFFF, KKKK, OOOO, QQQQ, RRRR, WWWW, BBBB, CCCCC, FFFFF, GGGGG, HHHHH, IIII, JJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, RRRRR, SSSSS, and TTTTT in alpha-numeric order to incorporate by reference revisions which became effective in 2003.

R. 61-62.63

Added Sections 63.50 to 63.56 and Tables 1 and 2 to Subpart B. These sections modify the content requirements of Part 2 applications, establish revised procedures for requests for applicability determinations, and establish a new timetable for the submission of section 112(j) Part 2 applications.

R. 61-62.68.42(b)(11)

Revised to clarify the information that is to be submitted as a result of an accident.

R. 61-62.68.150

Revised to clarify the dates of submission and requirements of submission for a facility's Risk Management Plan (RMP).

R. 61-62.68.155

Revised to eliminate the requirement to submit the worst case and alternative release scenarios of the RMP.

R. 61-62.68.160

Revised to include the registration information that is included with the RMP.

R. 61-62.68.190

Revised to clarify the dates of submissions for updates to the RMP.

R. 61-62.68.195

Added to require facilities subject to the accident prevention regulations to submit information on any significant chemical accidents within six months of the incident and requires emergency contact information to be corrected within one month.

R. 61-62.70.6(c)(5)(iii)(B)

Revised paragraph to clarify the information that facilities must submit regarding the methods for determining compliance status.

R. 61-62.70.6(c)(5)(iii)(C)

Revised paragraph to require facilities to include whether compliance during the permitting period was continuous or intermittent and the status of compliance with the permit.

R. 61-62.96.70(a)(1)

Revised paragraph to correct typographical errors.

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 August 23, 2004 at 10:00 a.m. in room 2280 at the Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to receive comments from interested persons on the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*.

Interested persons are also provided an opportunity to submit written comments to L. Nelson Roberts, Jr. 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 August 23, 2004. Comments received shall be submitted to the Board in a Summary of Public Comments and Department Responses.

Copies of the proposed regulation for public notice and comment may be obtained by contacting L. Nelson Roberts, Jr. at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-4122.

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

Interested members of the public and regulated community are invited to comment on the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards* at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on September 9, 2004. The public hearing is 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, 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.

Interested persons are also provided an opportunity to submit comments on the proposed amendments to L. Nelson Roberts, Jr. at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, Regulatory Development Section, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-4122. To be considered, comments must be received no later than 5:00 p.m. on August 23, 2004. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing on September 9, 2004, as noticed above. Comments received shall be submitted to the Board in a Summary of Public comments and Department Responses.

Statement of Need and Reasonableness:

The text of the Statement of Need and Reasonableness is submitted in Attachment A and is omitted here to conserve space in the Board Item.

DESCRIPTION OF REGULATION: Amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*.

Purpose of Regulation: These amendments and corrections will maintain conformity with Federal requirements and ensure compliance with Federal standards.

Legal Authority: The legal authority for Regulation 61-62, *Air Pollution Control Regulations and Standards*, is S.C. Code Section 48-1-10 *et seq.*

14 PROPOSED REGULATIONS

Plan for Implementation: The proposed amendments will take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control and publication in the *State Register*.

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

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60, 63, and 70 throughout each calendar year. Recent federal amendments include clarification, guidance and technical amendments regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and State Operating Permits Program. The Department proposes to amend Regulations 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, also known as Maximum Achievable Control Technology (MACT) standards; and 61-62.70, *Title V Operating Permit Program*, to incorporate recent federal amendments promulgated during the period from January 1, 2003, through December 31, 2003.

The Department also proposes to add a new *Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)*. Prior to the promulgation of MACT standards for source categories, EPA promulgated emission standards for specific hazardous air pollutants in 40 CFR Part 61 NESHAP. The Department proposes to incorporate by reference into this new regulation, R.61-62.61, the general requirements and emission standards that have been promulgated in 40 CFR Part 61 for which the Department requested and received delegation of authority to implement and enforce. In addition, the Department proposes to incorporate recent Federal amendments to 61-62.68, *Chemical Accident Prevention Provisions*, promulgated April 9, 2004, to amend the reporting requirements of its chemical accident prevention regulations.

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, are necessary to maintain consistency with Federal rules and will not require legislative review.

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:

EPA has provided the estimated costs and benefits for these standards in the *Federal Register* notices that are cited within this document.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in Federal law through the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, will provide continued protection of the environment and public health.

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

While there is no specific detrimental effect on the environment and public health, 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 are not adopted in South Carolina.

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. 2914
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

R. 117-1400

Preamble:

The South Carolina Department of Revenue is considering amending SC Regulation 117-1400 concerning the electric power tax to state that the Department will no longer use the Standard Industrial Classification ("SIC") Manual from 1967 as its guide in classifying "industrial customers" as that term is used in the electric power tax law. The Department, if this amendment is approved, will use the North American Industry Classification System ("NAICS") Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau.

Discussion

The South Carolina Department of Revenue is considering amending SC Regulation 117-1400 concerning the electric power tax to state that the Department will no longer use the Standard Industrial Classification ("SIC") Manual from 1967 as its guide in classifying "industrial customers" as that term is used in the electric power tax law. The Department, if this amendment is approved, will use the North American Industry Classification System ("NAICS") Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau.

Text:

Hereafter, the South Carolina Department of Revenue will use Sections 31, 32, and 33 of the North American Industry Classification System ("NAICS") Manual, as a guide to classify "industrial customers," as such term is used in Section 12-23-10.

Persons engaged in the business of manufacturing, generating and selling electric power must furnish to the Department a list, on or before January 31 and July 31 of each year, of industrial customers for which an exemption is claimed for the preceding periods, June through December and January through June, respectively. Such lists must show the name, address, KWH consumption and the classification code as provided in the NAICS Manual.

Notice of Public Hearing:

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building on the Capitol Complex in Columbia, South Carolina for September 21, 2004 at 11:00 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 117-1400 concerning the electric

16 PROPOSED REGULATIONS

power tax to state that the Department will use the North American Industry Classification System ("NAICS") Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. ' 1-23-111 (2000), to issue a report that the proposal to amend the regulation is needed and reasonable.

Comments:

All comments concerning this proposal should be mailed to the following address by August 24, 2004

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.

Summary of the Preliminary Assessment Report:

A preliminary assessment report is not required for this proposal.

Preliminary Assessment Report:

A preliminary assessment report is not required for this proposal.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-1400 concerning the electric power tax to state that the Department will use the North American Industry Classification System ("NAICS") Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau. The proposal to amend the regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is using a classification system that is no longer used by the Census Bureau. 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

Document No. 2915

DEPARTMENT OF REVENUE

CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

R. 117-325

Preamble:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the

Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, SC Regulation 117-325 is no longer needed.

Discussion

The South Carolina Department of Revenue is considering repealing SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, SC Regulation 117-325 is no longer needed.

Text:

No text is necessary since the proposal is only repealing a regulation that is no longer needed since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001.

Notice of Public Hearing:

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building on the Capitol Complex in Columbia, South Carolina for September 21, 2004, at 9:00 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 repeal SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. This regulation is no longer needed since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. ' 1-23-111 (2000), to issue a report that the proposal to repeal the regulation is needed and reasonable.

Comments:

All comments concerning this proposal should be mailed to the following address by August 24, 2004

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.

Summary of the Preliminary Assessment Report:

A preliminary assessment report is not required for this proposal.

Preliminary Assessment Report:

A preliminary assessment report is not required for this proposal.

18 PROPOSED REGULATIONS

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, SC Regulation 117-325 is no longer needed. The proposal to repeal this chapter in the code of regulations is needed to reduce any taxpayer confusion that may result from having a published regulation that is no longer needed. The proposal to repeal 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.