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# SOUTH CAROLINA STATE REGISTER

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of the  
GENERAL ASSEMBLY

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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

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## 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](http://www.scstatehouse.net)

| DOC<br>No.                            | RAT FINAL<br>No. ISSUE | SUBJECT                                                      | EXP.<br>DATE | AGENCY                                             |
|---------------------------------------|------------------------|--------------------------------------------------------------|--------------|----------------------------------------------------|
| 2816                                  | SR28-3                 | Environmental Protection Fees                                | 2-29-04      | Department Health and Envir Control                |
| 2810                                  | SR28-3                 | Fees, Liability Insurance Requirements                       | 2-29-04      | LLR: Elevator and Amusement Rides                  |
| 2824                                  | SR28-3                 | Environmental Protection Fees                                | 2-29-04      | Department of Health and Envir Control             |
| 2826                                  | SR28-3                 | Machines                                                     | 2-29-04      | Department of Revenue                              |
| 2815                                  | SR28-3                 | Decisions on a permit, Environmental Protection Fees         | 2-29-04      | Department of Health and Envir Control             |
| 2818                                  | SR28-3                 | Elevator and Amusement Rides, Inspections                    | 3-12-04      | LLR: Elevator and Amusement Rides                  |
| 2821                                  |                        | Highway Patrol Wrecker Regulations                           | 3-15-04      | Department Public Safety                           |
| 2830                                  |                        | Subdivision Water Supply and Sewage Treatment/Disposal       | 3-22-04      | Department of Health and Envir Control             |
| 2829                                  |                        | Residential Care Facility Administration                     | 3-22-04      | LLR: Board of Long Term Health Care Administrators |
| 2828                                  |                        | Burglar Alarm Systems                                        | 3-27-04      | LLR: Contractors' Licensing Board                  |
| 2832                                  | R. 200 SR28-3          | Business Enterprise Program                                  | 4-10-04      | Commission for the Blind                           |
| 2845                                  |                        | Failure to Appear                                            | 5-11-04      | LLR: Occupational Health and Safety Review Board   |
| 2844                                  |                        | Determination of Rates of Tuition and Fees                   | 5-11-04      | Commission on Higher Education                     |
| 2841                                  |                        | Forestry Commission Lands                                    | 5-11-04      | Forestry Commission                                |
| 2855                                  |                        | Water Classifications and Standards                          | 5-11-04      | Department of Health and Envir Control             |
| 2859                                  |                        | Standards for Licensing Freestanding or Mobile Technology    | 5-11-04      | Department of Health and Envir Control             |
| 2868                                  |                        | Defined Program, Grades 9-12                                 | 5-11-04      | Department of Education                            |
| 2857                                  |                        | Frozen Dairy Foods and Frozen Desserts                       | 5-11-04      | Department of Health and Envir Control             |
| 2856                                  |                        | Soft Drink Bottling Plants                                   | 5-11-04      | Department of Health and Envir Control             |
| 2854                                  |                        | Classified Waters                                            | 5-11-04      | Department of Health and Envir Control             |
| 2870                                  |                        | Recordkeeping                                                | 5-11-04      | LLR: Division of Labor                             |
| 2883                                  |                        | Specific Information Service Signing                         | 5-11-04      | Department of Transportation                       |
| 2860                                  |                        | Requirement for Limited License                              | 5-12-04      | LLR: Board of Medical Examiners                    |
| 2881                                  |                        | Flexibility through Deregulation Program                     | 5-20-04      | Board of Education                                 |
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| 2875                                  |                        | Additional Areas of Certification                            | 5-20-04      | Board of Education                                 |
| 2871                                  |                        | Water Quality Certification                                  | 5-20-04      | Department of Health and Envir Control             |
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| 2885                                  |                        | Wildlife Management Areas and Chronic Wasting Disease        | 5-21-04      | Department of Natural Resources                    |
| 2839                                  |                        | Hearing Procedure                                            | 5-21-04      | Department of Health and Human Services            |
| 2843                                  |                        | Recipient Utilization                                        | 5-21-04      | Department of Health and Human Services            |
| 2876                                  |                        | Requirements for Additional Areas of Certification           | 5-22-04      | Board of Education                                 |
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| 2850                                  |                        | Property Tax Reorganization                                  | 5-29-04      | Department of Revenue                              |
| <b>(Subject to Sine Die Revision)</b> |                        |                                                              |              |                                                    |
| 2886                                  |                        | Pilot and Apprentice Age Limitations and Pilot Registration  | 6-04-04      | LLR: Commissioners of Pilotage                     |
| 2887                                  |                        | Residential Builders Commission                              | 6-04-04      | LLR: Residential Builders Commission               |
| 2874                                  |                        | Native American Indian Entities, Advisory Committees         | 6-04-04      | Commission on Minority Affairs                     |
| 2891                                  |                        | Continued Competency                                         | 6-09-04      | LLR: Board of Medical Examiners                    |
| 2889                                  |                        | Barrier Free Design, Building Codes Council                  | 6-10-04      | LLR: Building Codes Council                        |
| 2890                                  |                        | Chapter Revisions                                            | 6-10-04      | LLR: Manufactured Housing Board                    |
| 2873                                  |                        | Air Pollution                                                | 6-23-04      | Department of Health and Envir Control             |
| 2898                                  |                        | Licensure Examination                                        | 6-30-04      | LLR: Board of Nursing                              |

## COMMITTEE REQUESTED REGULATION BE WITHDRAWN (120 DAY REVIEW PERIOD TOLLED)

| DOC<br>No. | DATE    | SUBJECT                          | AGENCY                             |
|------------|---------|----------------------------------|------------------------------------|
| 2822       | 3-26-03 | General-Food Stamp Program       | 6-26-03 Department Social Services |
| 2882       | 2-26-04 | Prescription Drug Discount Cards | 6-02-04 Consumer Affairs           |

## RESOLUTION INTRODUCED TO DISAPPROVE (120 DAY REVIEW PERIOD TOLLED)

| DOC<br>No. | DATE    | SUBJECT                                              | AGENCY                                         |
|------------|---------|------------------------------------------------------|------------------------------------------------|
| 2629       | 1-29-03 | Specific Project Stds for Tidelands & Coastal Waters | 1-31-03 Department of Health and Envir Control |
| 2801       | 2-19-03 | Individual Sewage Treatment and Disposal Systems     | 5-29-03 Department of Health and Envir Control |
| 2800       | 4-02-03 | Environmental Protection Fees                        | 5-20-03 Department of Health and Envir Control |
| 2753       | 5-08-03 | LIFE Scholarship Program                             | 5-13-03 Commission on Higher Education         |

## WITHDRAWN:

| DOC<br>No. | DATE    | SUBJECT                          | AGENCY                  |
|------------|---------|----------------------------------|-------------------------|
| 2823       | 5-14-03 | S C. Patients' Compensation Fund | Department of Insurance |
| 2729       | 2-04-03 | Fees                             | LLR: Board of Pharmacy  |

**2004-08**

**WHEREAS**, a vacancy exists in the office of Aiken County Coroner as a result of the death of Sue Townsend; and

**WHEREAS**, the Governor of the State of South Carolina is authorized to appoint a Coroner in the event of a vacancy pursuant to Sections 17-5-50 and 14-11-20 of the South Carolina Code of Laws, as amended; and

**WHEREAS**, Robert Clinton Haythorn residing at 106 Baldcypress Court, Aiken, South Carolina 29803, is a fit and proper person to serve as Aiken County Coroner.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Robert Clinton Haythorn as Coroner of Aiken County until the next general election for this office and until his successor shall qualify. This appointment shall be effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 20th DAY OF FEBRUARY, 2004.**

**MARK SANFORD  
Governor**



## DEPARTMENT OF CONSUMER AFFAIRS

NOTICE  
CHANGES IN DOLLAR AMOUNTS

The Administrator of the Department of Consumer Affairs announces changes in Dollar Amounts in Regulation 28-62, pursuant to Sections 37-1-109 and 37-6-104(1)(e). The changes will adjust certain dollar amounts in the Consumer Protection Code which are subject to change on July 1 of every even numbered year based on the changes in the Consumer Price Index for December of the prior year. The dollar amounts will increase 10% from the original amount, with the exception of Sections 37-2-203(2) and 37-3-203(2) which have a self-executing formula of 40% of the amount in Sections 37-2-203(1) and 37-3-203(1). The designated dollar amount figures are Sections 37-2-104(1)(e), 27-2-106(1)(b), 37-2-203(1), 37-2-407(1), 37-2-705(1)(a), 37-2-705(1)(b), 37-3-(104(1)(d), 37-3-203(1), 27-3-510, 37-3-511, 37-3-514, 27-5-102(2), (3) and (4). Pursuant to Section 1 of Act No. 82 of 2001, the Department is required to announce these changes by publication in the State Register by April 30 of each even numbered year.

Also, pursuant to Section 1 of Act No. 42 of 2003, two new sections are added to the amounts subject to change. The new sections are Sections 37-10-103 and 37-23-85. There will be no changes in these sections this period because Act No. 42 of 2003 did not take effect until January 1, 2004.

| Section             |                                      | Change Dollar Amount |                    |
|---------------------|--------------------------------------|----------------------|--------------------|
|                     |                                      | From                 | To                 |
|                     |                                      | 7/1/2002             | 7/1/2004           |
|                     | to 6/30/2004                         | to 6/30/2006         |                    |
| 2.104(1)(e)         | Consumer Credit Sale                 | 70,000.00            | 72,500.00          |
| 2.106(1)(b)         | Consumer Lease                       | 70,000.00            | 72,500.00          |
| 2.203(1)            | Delinquency Charge – Sales           | 14.00                | 14.50              |
| 2.203(2)            | Minimum Delinquency Charge           | 5.60                 | 5.80               |
| 2.407(1)            | Security Interest – Sales            | 840.00<br>2,800.00   | 870.00<br>2,900.00 |
| 2.705(1)(a)         | Delinquency Charge – Rental Purchase | 8.00                 | 8.40               |
| 2.705(1)(b)         | Delinquency Charge – Rental Purchase | 4.00                 | 4.20               |
| 3.104(1)(d)         | Consumer Loans                       | 70,000.00            | 72,500.00          |
| 3.203(1)            | Delinquency Charge – Loans           | 14.00                | 14.50              |
| 3.203(2)            | Minimum Delinquency                  | 5.60                 | 5.80               |
| 3.510               | Land as Security – Supervised Loans  | 2,800.00             | 2,900.00           |
| 3.511               | Maximum Loan Term                    | 840.00<br>2,800.00   | 870.00<br>2,900.00 |
| 3.514               | Attorney's Fees – Supervised Loans   | 2,800.00             | 2,900.00           |
| 5.103(2), (3) & (4) | Deficiency Judgment                  | 4,200.00             | 4,350.00           |
|                     |                                      |                      |                    |

#### 4 NOTICES

|        |                    |       |            |
|--------|--------------------|-------|------------|
| 10.103 | Prepayment Penalty | ----- | 150,000.00 |
| 23.85  | Prepayment Penalty | ----- | 150,000.00 |

#### 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 March 26, 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 Beaufort County

Conversion of a procedure room to a dedicated endoscopy procedure room (OR) for gastrointestinal procedures only for a total of two (2) operating rooms and one (1) endoscopy procedure room (OR).

Bluffton-Okatie Outpatient Center

Okatie, South Carolina

Project Cost: \$40,000

Affecting Jasper County

Establish an outpatient narcotic treatment program (Methadone Treatment Center).

Recovery Concepts, LLC

Hardeeville, South Carolina

Project Cost: \$148,830

##### Affecting Lexington County

Replacement and upgrade of two (2) Computed Tomography (CT) Scanners and one (1) Radiography and Fluoroscopy Room.

Lexington Medical Center

West Columbia, South Carolina

Project Cost: \$2,089,105

##### Affecting Richland County

Replacement of the existing Dual-Slice Computerized Tomography (CT) scanner (currently owned by Central Carolina Radiological Services) at Providence Hospital and replacement of the existing Single-Slice CT scanner at Providence Hospital Northeast with a new 16-slice CT scanner to be located at each hospital.

Providence Hospitals

Columbia, South Carolina

Project Cost: \$2,255,000

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 March 26, 2004. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Aiken County

Provide Mobile Positron Emission Tomography (PET) Scanner Services one day per week.  
Aiken Regional Medical Center  
Aiken, South Carolina  
Project Cost: \$298,375

Affecting Charleston County

Development of a fixed Positron Emission Tomography/Computerized Tomography (PET/CT) service in a freestanding imaging center to operate three (3) days per week.  
Charleston PET-CT Imaging Center, LLC  
Charleston, South Carolina  
Project Cost: \$2,928,394

Conversion of seventeen (17) Community Residential Care Facility (CRCF) beds to seventeen (17) nursing home beds that do not participate in the Medicaid (Title XIX) Program for a total of ninety nine (99) nursing home beds.  
Heartland of West Ashley Rehabilitation and Nursing Center  
Charleston, South Carolina  
Project Cost: \$350,598

Affecting Greenville County

Conversion of the existing 32 hospital based nursing home beds to general hospital beds at St. Francis Hospital, with a subsequent lease of the beds to Regency Hospital of Greenville, LLC for the establishment of a 32 bed Long Term Acute Care Hospital (LTACH) to be known as Regency Hospital of Greenville, LLC within St. Francis Hospital.  
Regency Hospital of Greenville, LLC  
Greenville, South Carolina  
Project Cost: \$1,411,899

Affecting Richland County

Replacement of the existing Dual-Slice Computerized Tomography (CT) scanner (currently owned by Central Carolina Radiological Services) at Providence Hospital and replacement of the existing Single-Slice CT scanner at Providence Hospital Northeast with a new 16-slice CT scanner to be located at each hospital.  
Providence Hospitals  
Columbia, South Carolina  
Project Cost: \$2,255,000

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Bureau of Land and Waste Management

Starmet CMI Corporation Site, Barnwell County  
Notice of Settlement

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control ("SCDHEC") has entered into a De Minimis Cost Recovery Settlement Agreement with Cameco Corporation ("Cameco"). The De Minimis Cost Recovery Settlement Agreement is subject to a thirty-day public comment period, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 122, 42 U.S.C. Section 9622 and the South Carolina Hazardous Waste Management Act ("SCHWMA"), S.C. Code Ann. Section 44-56-200 (2002).

## 6 NOTICES

The De Minimis Cost Recovery Settlement Agreement relates to the alleged release, and threatened release, of hazardous substances, pollutants, or contaminants at the Starmet CMI Corporation Site, located along S.C. Highway 80, at 365 Metal Drive, approximately eight miles from the Town of Barnwell, South Carolina (the "Site"). SCDHEC has incurred approximately \$423,705.78 in past response costs. The De Minimis Cost Recovery Settlement Agreement provides for the recovery of \$10,000.00 of past and future response costs from Cameco. The De Minimis Cost Recovery Settlement Agreement provides for a total release of Cameco from further CERCLA liability related to the Site and confers contribution protection upon Cameco pursuant to CERCLA Section 113, 42 U.S.C. Section 9613.

Notice of the Settlement has been provided to all identified potentially responsible parties, and shall be published in the State Register.

Copies of the De Minimis Cost Recovery Settlement Agreement may be obtained by providing a written Freedom of Information request to: SCDHEC, Freedom of Information Office, 2600 Bull Street, Columbia, SC 29201-1708.

Any comments must be submitted in writing, postmarked no later than April 26, 2004, and addressed to: Jessica J.O. King, Esquire, SCDHEC, Office of General Counsel, 2600 Bull Street, Columbia, SC 29201-1708.

UPON APPROVAL OF THE DE MINIMIS COST RECOVERY SETTLEMENT AGREEMENT, ANY AND ALL CLAIMS BY ANY AND ALL PERSONS AGAINST THE SETTLING PARTIES SEEKING CONTRIBUTION FOR MATTERS ENCOMPASSED BY THE COST RECOVERY SETTLEMENT AGREEMENT SHALL BE FORECLOSED.

### **DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Bureau of Land and Waste Management

Starmet CMI Corporation Site, Barnwell County

Notice of Settlement

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control ("SCDHEC") has entered into a Cost Recovery Settlement Agreement with the following parties: the United States of America on behalf of the United States Department of Energy and the United States Department of the Army (jointly referred to as "Settling Federal Agencies") and United States Enrichment Corporation ("USEC") (all settling parties jointly referred to as "Settling Parties"). The Cost Recovery Settlement Agreement is subject to a thirty-day public comment period, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 122, 42 U.S.C. Section 9622 and the South Carolina Hazardous Waste Management Act ("SCHWMA"), S.C. Code Ann. Section 44-56-200 (2002).

The Cost Recovery Settlement Agreement relates to the alleged release, and threatened release, of hazardous substances, pollutants, or contaminants at the Starmet CMI Corporation Site, located along S.C. Highway 80, at 365 Metal Drive, approximately eight miles from the Town of Barnwell, South Carolina (the "Site"). SCDHEC has incurred approximately \$423,705.78 in past response costs. The Cost Recovery Settlement Agreement provides for the recovery of \$210,000.00 from the Settling Federal Agencies and \$90,000.00 from USEC of SCDHEC's past response costs. The Cost Recovery Settlement Agreement provides for a total release of the Settling Parties from further liability related to the matters covered by the Cost Recovery Settlement Agreement and confers contribution protection for such matters upon the Settling Parties pursuant to CERCLA Section 113, 42 U.S.C. Section 9613.

Notice of the Settlement has been provided to all identified potentially responsible parties, and shall be published in the State Register.

Copies of the Cost Recovery Settlement Agreement may be obtained by providing a written Freedom of Information request to: SCDHEC, Freedom of Information Office, 2600 Bull Street, Columbia, SC 29201-1708.

Any comments must be submitted in writing, postmarked no later than April 26, 2004, and addressed to: Jessica J.O. King, Esquire, SCDHEC, Office of General Counsel, 2600 Bull Street, Columbia, SC 29201-1708.

UPON APPROVAL OF THE COST RECOVERY SETTLEMENT AGREEMENT, ANY AND ALL CLAIMS BY ANY AND ALL PERSONS AGAINST THE SETTLING PARTIES SEEKING CONTRIBUTION FOR MATTERS ENCOMPASSED BY THE COST RECOVERY SETTLEMENT AGREEMENT SHALL BE FORECLOSED.

**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 April 26, 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

Clean Management Environmental Group, Inc.  
4QR Environmental Solutions, Inc.  
USA Environment

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**

**BOARD OF MEDICAL EXAMINERS  
NOTICE**

In accordance with Section 1-23-40 of the 1976 Code of Laws of South Carolina, as amended, notice is hereby given that the State Board of Medical Examiners of South Carolina has adopted the following statement as

## 8 NOTICES

guidance for physicians in the practice of medicine under the South Carolina Medical Practice Act and the Principles of Medical Ethics as adopted by the Board. For purposes of discipline and licensure in matters before the Board, failure to practice in compliance with this statement may lead to discipline as a violation of the Medical Practice Act (40-47-5, *et seq.*).

### LIDOCAINE PARAMETERS FOR OFFICE-BASED LIPOSUCTION PROCEDURES

The following parameters are the result of a cooperative effort by groups involved in the use of lidocaine in performing liposuction procedures in office-based settings. The groups involved included the State Board of Medical Examiners, State Dermatology Society, State Anesthesiologists Society, State Plastic Surgery Society, and the South Carolina Medical Association. These parameters were accepted by consensus of the participants in the interest of assuring patient safety in office-based settings.

1. Maximum supernatant fat aspirant per case in the Level 1 office-based surgery facilities is 3000 cc. of fat.
2. Maximum supernatant fat aspirant per case in the Level 2 office-based surgery facilities is 4000 cc. of fat.
3. Maximum lidocaine dosage per case, regardless of facility level, is 55 mg per kg at 0.1% lidocaine or less (e.g., less than or equal to 1,000 mg per liter).

Although a physician who conducts himself in accordance with this policy should avoid disciplinary action by the Board of Medical Examiners, a physician may still face civil liability under some circumstances and should, therefore, consult private counsel where doubt exists as to what actions are appropriate.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL****CHAPTER 61**

Statutory Authority: S.C. Code Section 44-93-10 *et seq.*;  
44-93-100 (Act 351, July 20, 2002)

**Notice of Drafting:**

The Department of Health and Environmental Control is proposing to amend R. 61-105, Infectious Waste Management Regulations. Interested persons may submit their views by writing to Mr. Philip Morris, Program Manager, Infectious Waste Program, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments must be received no later than 5:00 p.m. on April 26, 2004, the close of the drafting comment period.

**Synopsis:**

The South Carolina General Assembly amended the Infectious Waste Management Act by Act 351, effective July 20, 2002. This amendment of Act 351 of Section 44-93-100 requires that used sharps such as needles and syringes from generators producing less than 50 pounds of infectious waste per month be treated prior to landfill disposition. Therefore, the Infectious Waste Management Section is proposing to revise R.61-105 to conform to these changes. Also, the Department is clarifying Section G (Small Quantity Generators) of R. 61-105 by more clearly stating that if small quantity generators produce 50 pounds of infectious waste or more in any one calendar month, they must manage the waste according to R. 61-105. Generator status may be re-evaluated after the generator produces documentation showing 12 consecutive calendar months of waste production less than 50 pounds every month.

Additionally, stylistic changes which may include corrections for clarification, references, and spelling will be made to improve the overall text of the regulation.

The proposed amendment will require legislative review.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL****CHAPTER 61**

Statutory Authority: 1976 Code Section 44-96-10 *et seq.*,  
44-96-190 and 44-96-380 (as amended)

**Notice of Drafting:**

The Department of Health and Environmental Control proposes to amend R.61-107.4, Solid Waste Management: Yard Trash and Land-clearing Debris; and Compost. Interested persons may submit their views by writing to Art Braswell at S.C. Department of Health and Environmental Control, Bureau of Land and Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on Monday, April 26, 2004.

**Synopsis:**

This proposed amendment of R.61-107.4 will update, clarify and amend the application, design, operation, monitoring, analytical testing, reporting, and closure requirements for the composting and grinding of yard trash and land-clearing debris. Distinctions between composting & grinding operations will be clarified, and requirements for temporary short-term grinding sites will be defined. This amendment will also expand the scope of the regulation by addressing the composting and grinding of

## **10 DRAFTING**

other waste streams and mixed waste streams. Application, design, permitting, operation, monitoring, analytical testing, reporting and closure requirements will be added for these waste streams as appropriate. Storm water and leachate control requirements and procedures for prevention of fires will also be addressed for all facilities. The name of the regulation will be changed to reflect the change in scope of the regulation. Pilot/demonstration projects will be addressed, as well as, requirements for the quality of the finished compost product. Other pertinent changes that fall within the scope of the proposed revisions as outlined in this Notice will be addressed, to include amendment of the applicability, definitions, the addition of violations and penalties, and stylistic changes.

Legislative review of the proposed amendment is required.

Document No. 2908  
**DEPARTMENT OF INSURANCE**  
Chapter 69

Statutory Authority: 1976 Code Sections 38-3-110, 1-23-110, et seq., 38-43-106

69-50. Continuing Insurance Education

**Preamble:**

The Department of Insurance proposes to amend Regulation 69-50, Continuing Insurance Education. The purpose of this amendment is to clarify and improve the current continuing education requirements placed on licensed producers.

**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, April 26, 2004 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, Post Office Box 100105, Columbia, South Carolina 29202-3105 on or before Friday, April 16, 2004.

**Preliminary Fiscal Impact Statement:**

No additional state funding is requested.

**Statement of Need and Reasonableness:**

The Department of Insurance is proposing this amendment to Regulation 69-50 in order to conform with recent changes with respect to continuing education requirements resulting from the enactment of the Producer Licensing legislation (Act 323 of 2002). This regulation establishes rules and standards which apply to continuing insurance education for individuals qualified or licensed to act as insurance producers in this State.

**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.

**Statement of Rationale:**

No reports or studies were relied upon in the drafting of this regulation. The bases for this regulation are requirements outlined in Chapter 43 of Title 38 of the South Carolina Code of Laws as well as national standards.

Document No. 2909  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**OFFICE OF STATE FIRE MARSHAL**  
CHAPTER 71

Statutory Authority: 1976 Code Section 23-36-80, as amended

**Preamble:**

The Department of Labor, Licensing and Regulation, Office of State Fire Marshal, proposes to revise existing regulations concerning the manufacturing, storage, handling, and use of explosives.

## 12 PROPOSED REGULATIONS

### Section-by-Section Discussion

#### 71-8302

Adopts a national consensus standard, National Fire Protection Association (NFPA) 495, as the basic safety requirement for handling explosives in South Carolina.

#### 71-8302.1 Definitions

NFPA 495 internally defines many terms that are now being deleted from the definitions section of this regulation to avoid duplication and the possibility of conflict. Certain state specific terms continue to be defined.

#### 71-8302.2 Exceptions

Covered in NFPA 495; added exemptions sections that conflict with the statutes.

#### 71-8302.3 Licenses

Deleted language covered in 23-36-40 and NFPA 495 Table 4.3.2 for permits and licensing; added criminal background checks for licensees.

#### 71-8302.4. Restrictions

Removed language covered in NFPA 495.

#### 71-8302.5 Record keeping and Inventories

Removed language covered in NFPA 495.

#### 71-8302.6 Revocation or suspension of Blasting Licenses or Permits

Removed language covered in NFPA 495 and State Explosives Control Act.

#### 71-8302.7 General Storage Requirements

Removed language covered in NFPA 495; added two sections on seismograph usage.

#### 71-8302.8 Magazine Requirements

Removed language covered in NFPA 495; added placarding requirements for magazines.

#### 71-8302.9 Use of Explosive Materials

Section deleted; material covered in NFPA 495.

#### 71-8302.10 Records

Changed retention of records from seven years to five years.

#### 71-8302.11 Blasting Safety

Removed language covered in NFPA 495; added two sections regarding seismograph use.

#### 71-8302.12 General Blasting Provisions

Section deleted; material covered in NFPA 495.

#### 71-8302.13 Loading of Explosives or Blasting Agents

Section deleted; material covered in NFPA 495.

#### 71-8302.14 Underground Transportation of Explosives

Section deleted; material covered in NFPA 495.

#### 71-8302.15 Initiation of Explosive charges-Electric Blasting

Section deleted; material covered in NFPA 495.

71-8302.16 Use of Safety Fuse

Section deleted; material covered in NFPA 495.

71-8302.17 Use of Detonating Cord

Section deleted; material covered in NFPA 495.

71-8302.18 Firing Blast

Removed obsolete and confusing language.

71-8302.19 Underwater Blasting

Deleted section.

71-8302.20 Blasting in Excavation Work Under Compressed Air

Section deleted; material covered in NFPA 495.

71-8302.21 Misfires

Section deleted; material covered in NFPA 495.

71-8302.22 Inspections After Blasting

Section deleted; material covered in NFPA 495.

71-8302.23 Black Powder Explosives

Section deleted; material covered in NFPA 495.

71-8302.24 Explosives Investigations

New Section. Previously variances section 71-8302.24; section added to cover explosives investigations and cost recovery.

71-8302.25 Variances

New section; old section was 71-8302.24. No other changes made to section.

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

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code, as amended, such hearing will be conducted at the Administrative Law Judge Division at 10 a.m. on Tuesday, May 11, 2004. Written comments may be directed to William Galloway, Interim State Fire Marshal, Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m., Monday, April 26, 2004.

**Preliminary Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION:

Purpose: The Department is updating regulations by adopting the National Explosives Standards, and by addressing explosives and blasting investigations.

Legal Authority: 1976 Code, Chapter 36 of Title 23

## 14 PROPOSED REGULATIONS

Plan for Implementation: The revised regulations will take effect upon approval by the General Assembly and publication in the State Register. The Department will notify licensed operators of the revised regulations and post revised regulations on the agency's web site.

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

The revised regulation will simplify compliance for explosives handling, use, storage and manufacturing by adopting a national standard which is familiar to professionals in the industry. The standardized format of the regulations will assist other regulatory entities with locating requirements within the regulations. There will be no increased cost to the State or its political subdivisions.

### DETERMINATION OF COSTS AND BENEFITS:

There will be no costs to the agency for implementing these revised regulations. The State Fire Marshal's Office currently oversees the program and receives no funding from the general fund. Adopting a national standard, rather than developing its own rules, decreases the State's liability. Adopting the national standard will also assist the state in explosives blasting damage complaints in that it reduces the amount of explosives that can be used in blasting near structures. Regulation requires seismographs be used.

### UNCERTAINTIES OF ESTIMATES

There are no uncertainties of estimates concerning the regulation.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

This regulation will have no negative effect on the environment and public health of this State if enacted. If not enacted, the State will continue to enforce a table of distances that has not proved effective in preventing property damage from blasting activities.

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

The State Fire Marshal will continue to receive complaints from homeowners and businesses regarding potential damage to property as a result of blasting in their vicinity.

### Statement of Rationale:

The State of South Carolina did not directly employ a scientific or technical basis to develop this regulation. The State relied upon the scientific and technical expertise of the National Fire Protection Association (NFPA). The NFPA uses a consensus system to evaluate the various data available. The NFPA 495 was drafted as a national consensus standard for the manufacture, transportation, storage and use of explosive materials. The table of distances in the standard were established based upon scientific studies by the federal government, National Institute of Occupational Safety and Health, and the Federal Bureau of Mines. Current regulations, which will be replaced by NFPA 495, do not follow the national standards adopted by the federal government. The SC State Fire Marshal's Office investigated four complaints in 2002 where blasting damaged homes. This damage may not have occurred if the proper table of distances, as developed by the federal government, had been adopted and used.

### 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. 2832  
**COMMISSION FOR THE BLIND**  
 CHAPTER 18

Statutory Authority: South Carolina Code Section 43-26-10 et seq.  
 20 USC Section 107 et seq.

Business Enterprise Program Rules and Regulation

**Synopsis:** The amendments will update many provisions of the Business Enterprise Rules and Regulations. The Regulations were published in the *State Register* on March 28, 2003 and the Public Hearing was held on May 1, 2003.

- 18-4            Changes length and content of classroom and on the job training. Requires blind licensed vendors to attend annual meetings.
- 18-5            Changes the composition of the Selection Committee and the percentage of weight placed on each criterion for selection of blind licensed vendors.
- 18-5(D)        Requires orientation for Selection Committee members.
- 18-5(E)        Requires letters of recommendation on behalf of blind licensed vendors to address the five criteria for selection.
- 18-5(K)        Entitles a blind licensed vendor priority for the next available vending facility if the blind licensed vendor was displaced for reasons beyond the vendor's control.
- 18-6            Deleted
- 18-7            Awards a blind licensed vendor additional selection points for hiring a blind assistant. Requires the blind licensed vendor to submit additional documents monthly.
- 18-8(A)-(B)    Makes the agency responsible for inventory codes. Requires blind licensed vendors to participate in the Setoff Debt Collection program. Requires blind licensed vendors to submit a list of suppliers and prices to the agency. Requires blind licensed vendors to maintain specific inventory levels and to perform annual merchandise inventory.
- 18-8(C)-(D)    Creates a work hour policy for vending facilities and establishes penalties for violations.
- 18-9            Requires blind licensed vendors to submit monthly sales tax forms and payments to the Department of Revenue.
- 18-10           Creates short and long term illness policies.
- 18-11           Requires annual performance reviews for blind licensed vendors.
- 18-14           Requires the agency to provide sufficient inventory if a blind licensed vendor is transferred or promoted into a location with insufficient merchandise.
- 18-15           Establishes a time limit for completion of equipment repairs.

## 16 FINAL REGULATIONS

- 18-17 Requires Business Enterprise Vendors Committee members to work in the district they represent and requires Vendors Committee Representative to reside within a fifty-mile radius of the district in which he or she works.

**Statement of Rationale:** The regulations were modified in response to the recommendations of the Legislative Audit Council. All blind vendors in the state were allowed to provide their input and these regulations have been reviewed and approved by the Business Enterprise Program Specialist at the United States Department of Education.

**Instructions:** Replace the former Chapter 18 Business Enterprise Program Rules and Regulations with these Chapter 18 Business Enterprise Program Rules and Regulations.

### **Text:**

#### 18-1 Purpose and Definitions

##### A. Purpose:

The South Carolina Commission for the Blind is designated as the State Licensing Agency for the Randolph-Sheppard Vending Facility Program. The program establishes, constructs, equips and maintains vending facilities on suitable public and private sites in order to provide qualified blind individuals with remunerative employment opportunities as Blind Licensed Vendors. The Rules and Regulations herein have been adopted to enable the South Carolina Commission for the Blind to carry out its full responsibilities under the Randolph-Sheppard Act, and assure the effective conduct of the Business Enterprise Program and the operation of each Vending Facility established under the program in accordance with 34 CFR Part 395, and with the requirements and conditions of each property managing agency, including the conditions contained in agreements, as well as in all applicable Federal and State laws, local ordinances and regulations.

##### Definitions

1. "Agency" means The South Carolina Commission for the Blind.
2. "Blind Licensed Vendor" means a Blind Licensee who is operating a vending facility.
3. "Blind Licensee" means a blind person licensed by the State Licensing Agency to operate a vending facility on public or private property.
4. "Blind Person" means a person who, after examination by a physician skilled in diseases of the eye or by an Optometrist, whichever such person will select, has been determined to have a central visual acuity of 20/200 or less in the better eye with correcting glasses, or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty (20) degrees.
5. "Business Enterprise Program (BEP)" means that department of the South Carolina Commission for the Blind charged with the management and supervision of the Vending Facility Program and carrying out the Randolph-Sheppard Act.
6. "Direct Competition" means the presence and operation of a vending machine or vending facility on the same premises as a vending facility operated by a Blind Licensed Vendor. Vending facilities operated in areas serving employees the majority of whom normally do not have direct access in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility will not be considered to be in direct competition with the vending facility operated by a Blind Licensed Vendor.

7. "Full Time" means working a minimum of 37.5 hours per week.
8. "License" means a written instrument issued by the Agency to a blind person authorizing such person to operate a vending facility.
9. "Net Proceeds" means the amount remaining from the sale of articles or services of vending facilities and any vending machine or other income accruing to Blind Licensed Vendors after deducting the cost of such sale and other expenses.
10. "Normal Working Hours" means an eight-hour work period between the approximate hours of 8:00 a.m. to 6:00 p.m., Monday through Friday.
11. "Permit" or "Agreement" means the official approval given the Agency by a department, agency or instrumentality in control of the maintenance, operation and protection of Federal or other property, whereby the Agency is authorized to establish a vending facility.
12. "Probation" means the condition of being under warning of retribution if further action continue.
13. "Promotion" means the movement of a Blind Licensed Vendor to a vending facility where the demonstrated or projected earnings are higher than the Blind Licensed Vendor's present vending stand proceeds.
14. "Satisfactory Site" means an area fully accessible to vending facility patrons and having
  - a. A minimum of 175 people patronizing the vending facility per shift.
  - b. Normal required working hours not to exceed 50 hours per week per Blind Licensed Vendor.
  - c. Sufficient break time for the patrons to have access to the facility.
  - d. Availability of local wholesalers to the vending facility.
  - e. Solvency of the business firm.
  - f. A minimum of 250 square feet for the vending and storage of articles necessary for the operation of the facility; and
  - g. Sufficient electrical, plumbing, heating and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.
15. "State Licensing Agency (SLA)" means the South Carolina Commission for the Blind (SCCB), which has been designated, under the provisions of the Randolph-Sheppard Act, to issue licenses to blind persons for the operation of vending facilities on federal or other property.
16. "Suspension" means status of a Blind Licensed Vendor in which he or she has lost all his or her rights and fringe benefits.
17. "Transfer" means the movement of a Blind Licensed Vendor to a vending facility that has demonstrated or projected earnings that are less than or approximately equal to the Blind Licensed Vendor's present vending stand proceeds.

## **18 FINAL REGULATIONS**

18. "Vending Facility" means automatic vending machines, cafeterias, snack bars, canteens, car service shelters, counters and such other auxiliary equipment which may be operated by Blind Licensed Vendors and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws.

19. "Vending Machine" for the purposes of assigning income under these regulations, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature and telephones will not be considered to be vending machines.

20. "Vending Machine Income" means receipts (other than those of a Blind Licensed Vendor) from vending machine operations, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns).

21. "Vendor Assistant" means a person who may or may not be blind who assists the Blind Licensed Vendor in the operation of a vending facility on a part-time or full-time basis.

22. "Vocational Rehabilitation Department" means that department of the South Carolina Commission for the Blind which, under the State plan for Vocational Rehabilitation Services approved pursuant to the provisions of the Rehabilitation Act of 1973, provides such services to the blind.

### **18-2 Issuance of Licenses**

A. Licenses are only issued to those individuals who are determined by the Agency to be:

1. Legally blind in accordance with the definition in 18-1 (B) (3) of these regulations.
2. Citizens of the United States; legal resident of the State of South Carolina.
3. At least 18 years of age.
4. In need of employment.

B. Individuals must be certified by the Vocational Rehabilitation and Business Enterprise Program as being qualified to operate a vending facility prior to licensing. (see 18-4 and 18-5).

### **18-3 Termination of Licenses**

A. Licenses will be issued for an indefinite period of time, but will be subject to suspension or termination if, after affording the Blind Licensed Vendor an opportunity for a full evidentiary hearing, the Agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the agreement, or the terms and conditions of the written agreement with the Blind Licensed Vendor.

B. Additionally, the license of a Blind Licensed Vendor may be suspended or terminated for any of the following reasons:

1. Improvement of vision so that the Blind Licensed Vendor no longer meets the definition of blindness in 18-1 (B) (3) of these regulations.

2. Extended illness with medically documented diagnosis of prolonged incapacity of the Blind Licensed Vendor to operate the vending facility in a manner consistent with the needs of the location or other available locations in the Vending Facility Program.

3. Withdrawal of the Blind Licensed Vendor from the program upon his or her written notification to the Agency.

#### **18-4 Training Program**

A. In order to successfully complete the Vending Facility Training Program, the client must possess the following basic skills:

1. Sufficient communication (verbal & reading) skills to complete the classroom work, outside reading assignments and the operation of a vending facility.

2. Basic mathematical skills necessary to make change, take inventory and to calculate costs, profits, mark-ups and percentages.

3. The ability to distinguish between various denominations of coins and currency.

4. Adequate home management skills to complete cleanup chores and the organization and location of stock.

5. Sufficient home maintenance skills to provide routine preventative maintenance to vending facility equipment.

6. The self-confidence, self-assurance and public relations skills necessary to deal with the public.

7. Adequate mobility skills to allow for independent travel to and from a vending facility.

B. Prior to acceptance into the Vending Facility Training Program a client:

1. Must be evaluated at the Ellen Beach Mack Rehabilitation Center to determine their current skill levels in the above areas, and to insure that they have adequate skills for independent living. In those areas where a candidate is found to be deficient, a training plan with instruction in those areas must be satisfactorily completed prior to acceptance into the Vending Stand Training Program.

2. Must have an approved Individual Evaluation Plan for the Vending Stand Training Program.

3. Must have the written approval of the BEP Director following his or her review of the case records and an interview with the candidate.

4. Will sign the Blind Vendor Trainee Agreement (Exhibit 7) which specifies that they understand that the successful completion of the program and the receiving of a license will in no way be considered a guarantee of placement in a vending facility. Such placement is subject to the availability of a vending facility whose location and size are compatible with the client's desires and abilities. All selections of Blind Licensed Vendors are made by the bidding process.

5. An individual who is in training applying for or operating a vending facility must be verified as being legally blind and sign a statement that will read; "I agree not to operate a motor vehicle to and from a vending facility while in training or working at such a location.

C. The Vending Facility Training Program includes 2 months of classroom work and 2 months of on the job training in vending facilities. After three (3) weeks of classroom training, the on-the-job training will include

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one (1) week in a small facility and one (1) week in a vending facility. Upon the completion of another five (5) weeks of classroom training the student will complete his or her on the job training with an additional six (6) weeks of work. The classroom work will include the following:

1. Introduction to the BEP.
2. Merchandising Concepts.
3. Customer Service Concepts.
4. Financial Management Concepts.
5. Employee/Employer Relationships.
6. Health, Sanitation and Safety Concepts.
7. On-the-Job Training Elements.

Throughout the training program the student is given outside reading assignments, lectures on salesmanship, public relations, personal attitudes, and the importance of personal hygiene and appearance. The student is thoroughly briefed on the vending facility rules and regulations. Upon successful completion of the classroom training, the student begins the on-the-job training experience in an actual vending facility. The student will gain experience in both small and large vending facilities. The student will be under the supervision of the Blind Licensed Vendor and the BEP Trainer. The ServSafe course and test will not be used to determine licensing of an individual. Test scores should be given to the individual and the areas of deficiency noted. Test results should be put into a form by which the student can read (ex. Braille, large print or tape).

D. In those cases where a client has been licensed in another state, he or she will be evaluated at the Ellen Beach Mack Rehabilitation Center to demonstrate competency in the vending facility skills prior to being licensed by this Agency.

E. Upon the successful completion of the Vending Facility Training Program the client will be licensed by the Agency as qualified to operate a vending facility (Exhibit 8) and will sign a certificate stating that he or she understands the rules and regulation of the program (Exhibit 9).

F. Blind Licensed Vendors already participating in the BEP will be afforded the opportunity to acquire additional information for the purpose of upward mobility through the following avenues:

1. Regional meeting to be held periodically throughout the state for each respective region which will be conducted by the BEP Counselor responsible for that region. Guest speakers may participate in these meetings discussing subjects which will help to improve individual Blind Licensed Vendors job performance.

2. The Blind Licensed Vendors Annual Meeting will be held at the South Carolina Commission for the Blind Columbia Facility. Attendance will be required by all Blind Licensed Vendors and an attendance record will be kept for each annual meeting. This record will be kept on file in the BEP Director's office in Columbia. Credit for this annual meeting attendance will be awarded two (2) points under the BEP Selection Criteria. The South Carolina Commission for the Blind will allocate funds to provide lunch for this meeting.

3. An evaluation of a Blind Licensed Vendor's facility can be conducted by the Commission for the Blind at which time a member of the staff or a neutral party operates the facility to determine areas in which the Blind Licensed Vendor needs additional assistance. The BEP Counselor will be required to work with the Blind Licensed Vendor to improve any skills needed for advancement or promotion.

4. BEP Counselors are required to work with each Blind Licensed Vendor on an individual basis to improve merchandising skills, increase knowledge of inventory, stock control and stock rotation, improve customer service and improve operations and equipment maintenance. This individualized training should enable Blind Licensed Vendors to move upward to a more difficult or demanding vending facility.

5. Blind Licensed Vendors may attend the Rehabilitation Center for evaluation or for the acquisition of additional skills.

6. Programs for Blind Licensed Vendors may be aired through the Commission's closed circuit radio program to acquaint them with the new procedures and new business techniques.

G. If a Blind Licensed Vendor has been inactive for a period of three (3) years or more, the local BEP Counselor will be required to evaluate the Blind Licensed Vendor through the administration of a standardized evaluation test. When deficiencies are found as a result of the standardized evaluation test, a refresher course will be required. The BEP Counselor will submit a summary of the evaluation to the BEP Trainer and the VR Counselor.

(Special Note: The BEP Counselors, BEP Director and the BEP Vendors Committee will develop a standardized test to be approved by the Commissioner.)

#### **18-5 Selection, Transfer and Promotion of Blind Licensed Vendors**

A. When new vending facilities are built or existing facilities become vacant, all Blind Licensed Vendors will be notified by the Vending Facility BidLine. The BidLine information will include the location and description of the vending facility, number of prospective patrons, operating hours, items to be sold, condition of the facility, projected Blind Licensed Vendor net proceeds and the bid closing date.

B. Should a Blind Licensed Vendor wish to bid on the vending facility, he or she will fill out the Bid Application, sign it, and return it to the BEP Director on or before the closing date. As each bid is received it will be dated and time of receipt noted. Any bids received after the closing date will not be considered and will be returned to the bidder. Following the closing of bids, the BEP Director will make a list of all bids received on or before the closing date. The list will indicate the date and time the bid was received and will be kept on file in the BEP Director's office. No Blind Licensed Vendor will be allowed to bid if he or she has any debts due to the South Carolina Commission for the Blind, wholesalers, suppliers, or any facility related debts. After merchandise inventory is taken and if any money is due the South Carolina Commission for the Blind, it must be repaid within a one-year period. Failure to pay during this time frame will result in the Blind Licensed Vendor being removed from the vending facility.

C. The Agency Selection Committee will be composed of the BEP Director (one (1) vote), the BEP Counselor from the district where the vending facility is located (one (1) vote), one Commission employee selected by the Commissioner (one (1) vote), the BEP Representative from the district that the facility is located (one (1) vote), and an Independent Business person to be selected from a rotating pool of four (4) people from within the community (one (1) vote). The Vendors Committee will nominate candidates for the pool. The Commissioner and the BEP Selection Committee will take minorities into consideration when making their decisions. The Agency Selection Committee will determine if there is a qualified applicant and will make their selection based on the five general criteria:

35% 1. Demonstrated knowledge of business practices: bookkeeping and record keeping (5 points), purchasing and inventory control (11 points), sales promotion and display (4 points), restaurant and food equipment and vending machines (4 points), sales and profit margins (11 points).

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25% 2. Work habits: reporting to work on time and attendance record (7 points), cleanliness and sanitation of the vending facility (10 points), personal hygiene (3 points), submission of Monthly Stand Reports on time (5 points).

25% 3. Work attitudes: good working relationship and positive attitude toward customers (10 points), salesmen, repair personnel, building management personnel, and agency staff (7 points), written complaints (4 points), attendance at the Annual BEP Vendors Meeting (2 points), hiring of a blind assistant (2 points).

5% 4. Demonstrated ability to handle the physical demands of the vending facility in question, including health (2 points) and mobility (3 points).

10% 5. Seniority (10 points): Seniority will begin on the first day a certified Blind Licensed Vendor begins operating a vending facility in South Carolina. Seniority is counted only for the years of service as a Stand Manager being certified and operating a vending facility under the Randolph-Sheppard program in South Carolina. (Blind Licensed Vendors who have been certified through the Training Center will receive one-half time credit for seniority as Blind Licensed Vendor Assistants. Work as a Blind Licensed Vendor Assistant must be verified by the Blind Licensed Vendor for whom the assistant worked.) A person who resigns or retires from a vending facility in South Carolina will lose all seniority, except in extreme circumstances such as drastic loss of sales and earnings through no fault of the Blind Licensed Vendor, or because of health reasons. Upon satisfactory improvement in health, with a Physician's certification, a Blind Licensed Vendor would retain all seniority. Seniority Verification Forms will be on file in the BEP Director's office for the use of Seniority Verification. (See exhibit...Seniority Verification Form in back of Manual). The Agency Selection Committee will have the authority to decide which facility the Blind Licensed Vendor will receive if he or she is the most qualified applicant for two or more facilities.

D. The BEP Director will develop an orientation procedure for the Agency Selection committee to be held annually at the South Carolina Commission for the Blind, Columbia facility. This training will be conducted by the BEP Director and will encompass the BEP Selection Criteria. If there is a change in the composition of the Selection Committee, the new committee member will meet with the BEP Director for orientation on the BEP Selection Committee prior to serving on this selection committee. Documentation of this orientation procedure and training will be kept in the BEP Director's office.

E. Letters of Recommendation will address the five criteria for the BEP Selection Process. Each sub category for the five criteria will be separately discussed in the BEP Counselor's recommendation. The last twelve (12) months of Contact and Inspection Reports will be used for the BEP Counselor's Recommendation Report.

F. A Blind Licensed Vendor will maintain a satisfactory performance rating prior to his or her request for transfer or promotion. A Blind Licensed Vendor must remain in a facility for one (1) year prior to transfer or promotion, except in extreme circumstances such as drastic loss of sales and earnings through no fault of the Blind Licensed Vendor, or because a Blind Licensed Vendor is forced to resign a facility for health reasons. Upon satisfactory improvement in health, with a Physician's Certificate, a Blind Licensed Vendor would be eligible to bid.

G. The bidders will be notified in writing by the BEP Director of the selection.

H. When a vending facility becomes vacant and the bid notice is on the BidLine and has resulted in no qualified Blind Licensed Vendor bidding on the vending facility, the South Carolina Commission for the Blind and the BEP Director have the authority to locate a qualified blind person, provide training, and upon successful completion of at least 6 months On-the-Job Training will be certified as a Blind Licensed Vendor. This person will be given the option to either accept this facility or to bid on another facility. If the Blind Licensed Vendor accepts this facility, the Blind Licensed Vendor must remain in the facility for one (1) year prior to transfer or promotion, except in extreme circumstances such as drastic loss of sales and earnings

through no fault of the Blind Licensed Vendor or because a Blind Licensed Vendor is forced to resign a facility for health reasons. Upon satisfactory improvement in health with a Physician's certificate a Blind Licensed Vendor will be eligible to bid. If he or she does not accept the facility, the time that he or she worked in the facility will be awarded to him or her as half time.

I. If a Blind Licensed Vendor bids on a vending facility and decides that he or she wants to withdraw his or her bid, the withdrawal notice must be received before the selection has been made. If a Blind Licensed Vendor who has submitted a bid and is subsequently awarded a vending facility and refuses that vending facility, he or she may not bid on another facility for a period of six months.

J. Any Blind Licensed Vendor who resigns or retires from a vending facility in South Carolina for reasons other than health is not eligible to bid on a vending facility for a period of six months.

K. Any Blind Licensed Vendor who has satisfactorily operated his or her vending facility and has been displaced for reasons beyond his or her control will be entitled to priority for the next (one only) vending facility of comparable sales, earnings, and ability of the Blind Licensed Vendor to operate the facility.

#### **18-6 Vending Facilities With Multiple Vendors (Deleted)**

#### **18-7 Vendor Assistants**

A. Blind Licensed Vendors who have a need for Vendor Assistants in order to operate their vending facilities are responsible for the hiring, training, salary withholdings and benefits of such Assistants.

B. Because it is the policy of the Agency to employ as many blind and visually impaired individuals as possible in the vending facility program, a Blind Licensed Vendor will comply with the following procedure in the event he or she determines he or she is in need of a Vendor Assistant:

1. Notify his or her BEP Counselor who will contact the Vocational Rehabilitation Department to determine if there are any blind or visually impaired clients that may be qualified for work as Vendor Assistants. Such clients will be referred to the Blind Licensed Vendor for an interview.

2. Blind Licensed Vendors who hire a blind assistant will be awarded 2 points under the BEP Selection Criteria under work attitudes.

3. In the event there are no qualified blind or visually impaired clients available, or the Blind Licensed Vendor determines after interview of qualified clients that they will not meet his or her needs, the Blind Licensed Vendor may hire a sighted Vendor Assistant.

C. Blind Licensed Vendors will submit a Vendor Monthly Assistant Form along with the Monthly Stand Report to the South Carolina Commission for the Blind; this form will list the names, visual condition, working hours and salary of all Vendor Assistants.

#### **18-8 Operating Agreement Between the Agency and Blind Licensed Vendor**

A. The Agency agrees to:

1. Equip the vending facility for carrying out the business authorized by the permit.

2. Furnish initial stocks of merchandise and cash sufficient to enable the Blind Licensed Vendor to commence operating the business authorized by the permit. The Agency will ensure sufficient code dates for assigned merchandise inventories. The Agency will also furnish the Blind Licensed Vendor with a complete inventory of all equipment, initial stocks and cash provided.

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3. Maintain the equipment at the vending facility in good repair, and will replace obsolete and worn out equipment as necessary, subject to the availability of funds.

4. Provide supervisory and management service necessary for the efficient operation of the vending facility.

5. Participate in the Setoff Debt Collection Program with the Department of Revenue, to enforce the collection of the Blind Licensed Vendor's debt owed to the South Carolina Commission for the Blind.

B. The Blind Licensed Vendor agrees to:

1. Be responsible for having the vending facility open for business on the days and during the hours specified in the permit.

2. Operate the vending facility business on a cash basis except for such credit as may be established and authorized by the agency.

3. Be accountable to the Agency for the proceeds of the business of the vending facility and will handle the proceeds, including payments to suppliers and deposits of funds in accordance with instructions from the Agency.

4. Carry on the business of the vending facility in compliance with applicable health laws and regulations.

5. Maintain a neat and clean businesslike appearance while working at the vending facility and will conduct business in an orderly, businesslike manner.

6. Take proper care of the equipment of the vending facility and ~~will~~ make alterations or changes therein only with the written approval of the Agency.

7. Notify the Agency within a reasonable amount of time in advance of taking any voluntary leave from the vending facility and as soon as possible with respect to any involuntary leave.

8. Provide for a substitute operator for the vending facility as may be necessitated by the absence of the Blind Licensed Vendor due to illness or vacation. The salary of the person who substitutes for the Blind Licensed Vendor will be charged to the vending facility where the service is performed.

9. Keep such records and make such reports, as the Agency will require.

10. Provide housekeeping, janitorial and exterminating services required for the vending facility and not provided by the property manager.

11. Maintain a business account (set of vending facility records) separate from the Blind Licensed Vendor's personal banking accounts.

12. Maintain inventory levels as prescribed by the Agency.

13. Establish selling prices for the vending facility stock in trade as prescribed by the Agency.

14. Be responsible for safeguarding money, stock in trade and supplies. The Blind Licensed Vendor will be responsible for absorbing any losses or reduction in value of stock regardless of cause.

15. Report promptly any complaints or criticism of the property manager to the Agency.

16. Report promptly any malfunctioning or damaged equipment, loss by fire, damage, theft or any other cause to the Agency.

17. Report the names of Vendor Assistants employed, their working hours, weekly salary and visual condition to the Agency.

18. Hire legally blind Vendor Assistants whenever feasible.

19. Cooperate with the BEP Counselor in the conducting of inventories of the vending facility as deemed necessary by the Agency. The Blind Licensed Vendor will submit a list of suppliers and a price list to the BEP Counselor in the conducting of these inventories. After the merchandise inventory is taken and if any money is due to the South Carolina Commission for the Blind, it must be repaid within a 1-year period. Failure to pay during this time frame will result in the Blind Licensed Vendor being removed from the vending facility. Each Blind Licensed Vendor is required to perform an annual merchandise inventory. This inventory is to be conducted by December 31<sup>st</sup> of each year and a copy of this inventory must be submitted to the BEP Counselor by January 15<sup>th</sup> of the following year. The Blind Licensed Vendor must maintain an inventory level not to decrease more than \$500 of the original assigned inventory.

20. Blind Licensed Vendors are required to operate all machines assigned to their facility. Any transfer of machines to full service must have the prior approval of the BEP Director.

**C. Work Hour Policy for Indoor and Vending Route Locations.**

Each Blind Licensed Vendor must give his or her BEP Counselor the hours he or she will work each week. The schedule must include a minimum of 37.5 hours per week. If a Blind Licensed Vendor is not at his or her vending facility during the hours he or she has given his or her BEP Counselor, he or she will be considered absent from work.

1. At the first occurrence when a BEP Counselor visits a vending facility and the Blind Licensed Vendor is not at the facility the required hours, the BEP Counselor will document the files and give an oral warning. The oral warning will be accompanied by a letter stating this is the first occurrence and is the first official warning.

2. The second time a Blind Licensed Vendor is absent from work during the year (12 continuous months) the BEP Counselor will again notify the Blind Licensed Vendor. The Blind Licensed Vendor will receive a warning from the BEP Counselor. The warning will be in writing and indicate it is the second warning.

3. Should a Blind Licensed Vendor fail to be at work three times during a 12 month continuous period, this will result in that individual being placed on probation for twelve months. The Blind Licensed Vendor will receive a letter from the BEP Director stating that he or she is on probation for twelve months and failure to be at work will result in his or her termination.

4. If a Blind Licensed Vendor is absent from work during the probationary period, the individual will be terminated from the Vending Facility Program.

5. If a Blind Licensed Vendor is at work for a period of one year, beginning from probationary period, he or she will be reinstated as a Blind Licensed Vendor in good standing.

**D. Work Hour Policy for Interstate Vending Facilities.**

All Blind Licensed Vendors must work a minimum of four to six hours per day, seven days a week. (Blind Licensed Vendors working at Welcome Centers must work the hours of the Welcome Center.) All Blind Licensed Vendors must work a minimum of 37.5 hours per week. Each Blind Licensed Vendor must give his or her BEP Counselor the hours he or she will work each week (minimum of four to six hours per day). If a Blind Licensed Vendor is not at his or her vending facility during the hours he or she has given his or her BEP Counselor, he or she will be considered absent from work.

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1. At the first occurrence when a BEP Counselor visits a vending facility on an interstate highway and the Blind Licensed Vendor is not at the facility the required hours, the BEP Counselor will document the files and give an oral warning. The oral warning will be accompanied by a letter stating this is the first occurrence and is the first official warning.

2. The second time a Blind Licensed Vendor is absent from work during the year (12 continuous months) the BEP Counselor will again notify the Blind Licensed Vendor. The Blind Licensed Vendor will receive a warning from the BEP Counselor. The warning will be in writing and indicate it is the second warning.

3. Should a Blind Licensed Vendor fail to be at work three times during a 12 month continuous period, this will result in that individual being placed on probation for twelve months. The Blind Licensed Vendor will receive a letter from the BEP Director stating that he or she is on probation for twelve months and failure to be at work will result in his or her termination.

4. If a Blind Licensed Vendor is absent from work during the probationary period, the individual will be terminated from the Vending Facility Program.

5. If a Blind Licensed Vendor is at work for a period of one year, beginning from probationary period, he or she will be reinstated as a Blind Licensed Vendor in good standing.

The Blind Licensed Vendor must sign all Work Hour Policy Warnings. If the Blind Licensed Vendor refuses to sign the warning, the BEP Counselor or the BEP Director is required to make a note of the refusal on the warning, sign the warning and have it witnessed in the presence of the Blind Licensed Vendor.

### E. General Agreement

1. The business to be carried on at the vending facility will be limited to that specified and authorized in the permit.

2. The right, title and interest in and to the equipment of the vending facility, the stock in trade and funds on hand are vested in the Agency, and will be left at the vending facility or turned over to the Agency upon the termination of this agreement for any reason by either of the parties. In such an event, the fair market value of the Vendor's interest will be determined by the Agency and paid to the Blind Licensed Vendor or to the Blind Licensed Vendor's heirs or assignees.

3. The monthly income of the Blind Licensed Vendor will be the net profits of the business of the vending facility for the period in question.

4. Rebates, commissions or bonuses received by the Blind Licensed Vendor from suppliers are and must be accounted for as income of the vending facility. Under no circumstances are such funds to be treated as the separate personal funds of the Blind Licensed Vendor.

5. Merchandise taken from the stock in trade of the vending facility by the Blind Licensed Vendor for his or her own personal use will be accounted for by the Blind Licensed Vendor and paid for at cost prices and reported on the monthly report.

6. The South Carolina Commission for the Blind will make available to all Blind Licensed Vendors arrangements for carrying general liability and product liability insurance. The cost of such insurance will be a cost of operating the business of the vending facility and will be taken into account as such in determining the net proceeds of the business.

7. Hot food will be sold only in those vending facilities specifically built and equipped for that purpose and which comply with applicable health regulations.

8. The Blind Licensed Vendor may terminate this agreement at any time. It will be terminated upon the revocation or termination of the permit or contract. This agreement may be terminated by the Agency if the business of the vending facility is not conducted in accordance with this agreement or with applicable federal, state or local laws and regulations. In addition, the Blind Licensed Vendor's seniority will be revoked and the manager will be ineligible to bid on any location for six months.

#### **18-9 Blind Licensed Vendor Record Keeping and Reporting Procedures**

A. All Blind Licensed Vendors operating a vending facility will complete the BEP Monthly Stand Report each month.

B. Each Blind Licensed Vendor operating a vending facility will receive individualized instruction from his or her BEP Counselor enabling him or her to properly utilize the BEP Monthly Stand Report form.

C. The Blind Licensed Vendor will be responsible for the following:

1. Maintaining a record of all purchases (invoices paid during each month) and entering that amount on the BEP Monthly Stand Report each month and enclosing all invoices with his or her monthly stand report. (If invoices are lost, the Blind Licensed Vendor will obtain a duplicate invoice from his salesman or vendor.)

2. Maintaining an accurate record of gross cash (cash on hand which includes sales tax, rent, insurance and take home pay) and entering that amount on the BEP Monthly Stand Report. No cash may be removed for personal use until the money has been recorded as part of the gross cash figure.

3. Maintaining a record of all helpers' salaries and entering that information on the BEP Monthly Stand Report. The Blind Licensed Vendor will provide for payment of worker's compensation, social security taxes, insurance and all other related expenses on all employees.

4. The Blind Licensed Vendor will be responsible for submitting to the Department of Revenue the Monthly Sales Tax form with a check or money order for sales taxes made payable to the South Carolina Department of Revenue.

5. Insuring that the BEP Monthly Stand Report is mailed to the South Carolina Commission for the Blind no later than the 5th working day following the end of each month.

- a. A report is late when it has not been mailed to the South Carolina Commission for the Blind on the 5th working day following the end of each month. The following steps will be enforced:

1. At the first occurrence of a late Monthly Stand Report, an Oral Warning will be issued by the BEP Counselor to the Blind Licensed Vendor. This Oral Warning will be accompanied by a letter stating that this is a first occurrence and is the first official warning.

2. At the second occurrence of a late Monthly Stand Report, the BEP Counselor will notify the Blind Licensed Vendor. The Blind Licensed Vendor will receive a warning from the BEP Counselor, this warning will be in writing and will indicate that it is the second official warning.

3. At the third occurrence of a late Monthly Stand Report, the BEP Director will notify the Blind Licensed Vendor in writing that he or she will be placed on probation for one year.

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4. If a late Monthly Stand Report occurs during the probationary period, the Blind Licensed Vendor will be placed on a suspension status resulting in the loss of fringe benefits and right to bid on any vending facilities for a period of one year. Notification will be in writing from the BEP Director and hand delivered by the BEP Counselor or by certified mail.

5. If a Blind Licensed Vendor submits a late Monthly Stand Report during the suspension period (one-year) the Blind Licensed Vendor will be terminated.

6. If the Blind Licensed Vendor is unable to complete the BEP Monthly Stand Report, they may request help from the BEP Counselor assigned to their district. When the Blind Licensed Vendor is requesting assistance in completing the BEP Monthly Stand Report from either the BEP Counselor or the Agency, the Blind Licensed Vendor must make certain the following information is available to the BEP Counselor or the Agency.

a. Gross Cash-Line 1 on the Monthly Stand Report. The correct gross cash figure including all cash must be reported.

b. All invoices (purchases) must be included.

c. All helper's salaries-Line 3 of the Monthly Stand Report must be included.

d. All newspaper sales-Line 5 of the Monthly Stand Report must be included.

e. All Full Service Machine Income(map machines, USA Today, etc.)-Line 20 of the Monthly Stand Report must be included.

### **18-10 Vacation, Sickness and Maternity Leave**

A. Blind Licensed Vendors are entitled to three (3) weeks vacation during each calendar year. Blind Licensed Vendors will be permitted to carry over from one calendar year to the next any unused vacation credit up to a total accumulation of forty-five (45) days. Emergency leave must be certified as a true emergency and approved by the BEP Counselor and BEP Director.

#### **B. Short-term Illness**

1. Blind Licensed Vendors are required to report all illnesses or injuries that may prevent full time employment to the BEP Counselor.

2. All short term illness leave must be approved by the BEP Director.

3. The Blind Licensed Vendor is required to hire a suitable employee to operate the facility while absent because of illness or injury.

4. In a 12 month period, up to 120 days of short-term sick leave may be granted.

5. If a short-term illness extends beyond 120 days, the long-term sick leave policy will be applied.

6. All short-term illness needs a statement verified by a physician. If an illness extends longer than 4 days, a Physician statement is required.

#### **C. Long-term Illness**

1. Blind Licensed Vendors are allowed up to 1 year long-term leave for prolonged illness.

2. The BEP Director must approve all long-term sick leave.
  3. All requests for long-term sick leave must include a detailed Physician's statement stating the nature of the illness.
  4. Upon return to work from long-term sick leave, the Blind Licensed Vendor must provide the BEP Director with a Physician's statement stating that he or she is able to return to work full time.
  5. When a Physician's statement indicates a Blind Licensed Vendor is unable to return to full time employment after a 12 month period of long-term sick leave, the Selection Committee will issue a 30 day notice of termination.
- D. The Blind Licensed Vendor will take maternity leave as soon as she finds her condition warrants discontinuance of her responsibilities or when so ordered by her physician. The Blind Licensed Vendor will be responsible for finding a suitable replacement. The Blind Licensed Vendor will be expected to resume her duties within six (6) weeks following the delivery of her child, unless otherwise ordered by her physician. (All Physicians' orders must be in writing.)

#### **18-11 Supervision of Vending Facilities**

- A. As the State Licensing Agency for the Randolph-Sheppard Vending Stand Program, the Agency is responsible for the supervision and management of each vending facility.
- B. In order to carry out this responsibility, the BEP Counselor will inspect each stand at least monthly using the Contact and Inspection Report Form (Exhibit 11). Inspections of each stand may be made more frequently if deemed necessary by the Agency.
- C. Each Blind Licensed Vendor will be expected to participate in the periodic district meeting conducted by their BEP Vendor's Committee Representative. Participation in such meetings will be one factor considered in evaluating the Blind Licensed Vendor's performance on the Contact and Inspection Report.
- D. The Contact and Inspection Reports will be signed by the Blind Licensed Vendor and BEP Counselor. One copy of the report will be given to the Blind Licensed Vendor and one copy will be placed in the Blind Licensed Vendor's case record.
- E. The BEP Director will establish an Annual Performance Review of Blind Licensed Vendors. One copy of this report will be given to the Blind Licensed Vendor and one copy will be placed in the Blind Licensed Vendor's case record.
- F. In some cases, Blind Licensed Vendors may be in need of and eligible for post employment services through the Agency's Vocational Rehabilitation Department to assist them in maintaining employment and preventing a breakdown of rehabilitation results. The determination of need for post employment services and eligibility for such services must be made on an individual basis by the VR Counselor in consultation with the BEP Counselor and the Blind Licensed Vendor.
- G. The Agency maintains the right to conduct a study of any vending facility if it determines the Blind Licensed Vendor may be encountering some difficulty in his or her operation such as decreasing net proceeds or loss of business. Such a study may range from a simple spot check of vending facility records to a more extensive study involving the actual operation of the vending facility for a period of time by a BEP Counselor or other Agency staff member. In such an event, the Blind Licensed Vendor will continue to receive the net proceeds of the vending facility for the period of the study.

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H. No Blind Licensed Vendor will be allowed to distribute any menus or advertising of his or her vending facility in any building in which another South Carolina Commission for the Blind vending facility is located.

I. Any form of solicitation in a South Carolina Commission for the Blind facility whereby a jar, cup or other instrument is used to collect money for any personal benefit or for other purposes, unless approved in advance by the South Carolina Commission for the Blind is prohibited.

### **18-12 Explanation to A Blind Licensed Vendor Of His Rights And Responsibilities**

The Agency will furnish and explain to each Blind Licensed Vendor copies of documents relevant to the operation of the vending facility, including the rules and regulations, the agreement and permit covering the operation of the vending facility and The Agreement for Operation of a Vending Facility under the Randolph-Sheppard Act between the Agency and the Blind Licensed Vendor.

### **18-13 Administrative Reviews, Evidentiary Hearings and Arbitration of Blind Licensed Vendor Complaints**

#### **A. Administrative Review**

1. The purpose of an Administrative Review is to provide an informal procedure through which the Agency provides a Blind Licensed Vendor or his or her representative an opportunity to express and seek remedy for his or her dissatisfactions with any Agency action arising from the operation or administration of the vending facility program. The Agency will make every effort to resolve a Blind Licensed Vendor's complaint at the Administrative Review level since the resolution of disputes at the earliest possible time is mutually advantageous to all parties concerned. Such efforts will not discourage or interfere with Blind Licensed Vendors exercising their rights to pursue the Full Evidentiary Hearing process.

2. A Blind Licensed Vendor or his or her designee (who may be a member of the BEP Vendors Committee in accordance with Section 395.14 (B) (2) of the Randolph-Sheppard Regulations) may request in writing, to the Commissioner within 15 working days of the occurrence of the action, an Administrative Review of an Agency action arising out of the Vending Facility Program with which the Blind Licensed Vendor is aggrieved. This review will be made only by a member or members of the administrative staff of the Agency who has not in any way participated in the Agency action in question.

3. The Administrative Review will be held at a time and place convenient to the Blind Licensed Vendor requesting such review. The Administrative Review should be held during regular Agency working hours at the Central Office. An Administrative Review will be conducted within fifteen (15) working days of receipt by the Agency of such a written request.

4. Transportation, reader or other communication services, if needed, will be arranged for the Blind Licensed Vendor by the Agency.

5. Documentation as to written requests for Administrative Reviews, actions and decisions resulting therefrom will be maintained as part of the Official Record of the Administrative Review Process.

6. When an informal Administrative Review does not resolve a dispute to the satisfaction of a Blind Licensed Vendor, such Blind Licensed Vendor may request of the Agency a Full Evidentiary Hearing in accordance with Section 395.13 (A) of the Randolph-Sheppard Regulations.

#### **B. Full Evidentiary Hearing:**

1. When a Blind Licensed Vendor is dissatisfied with any Agency action arising from the operation or administration of the Vending Facility Program, such Blind Licensed Vendor may file a complaint with the

Agency requesting a Full Evidentiary Hearing. Such complaint should identify one or more disputed issues of fact to be resolved in an Evidentiary Hearing. Complaints alleging only issues of law, for example the authority of the Agency to take a particular action, are not appropriate for resolution through an Evidentiary Hearing. An Evidentiary Hearing should not be conducted to settle issues of law, the resolution of which depends on an interpretation of federal statutory or regulatory requirements.

2. Blind Licensed Vendors will be informed in writing of their right to and the procedures to be followed in obtaining a Full Evidentiary Hearing at the time they are licensed.

3. If a Blind Licensed Vendor requests a Full Evidentiary Hearing, such request must be made either within 15 working days after an adverse decision based on an Administrative Review or, in the absence of an Administrative Review, within 15 working days of the occurrence of the action with which the Blind Licensed Vendor is dissatisfied.

4. A Blind Licensed Vendor must request a Full Evidentiary Hearing in writing. This request must be transmitted to the Commissioner of the Agency personally or by Certified Mail, Return Receipt Requested. This request may be transmitted through the BEP Vendors Committee in accordance with Section 395.14 (B) (2) of the Randolph-Sheppard Regulations.

5. A Blind Licensed Vendor is entitled to legal counsel or other representation in a Full Evidentiary Hearing. A Blind Licensed Vendor may wish to obtain his or her own counsel at his or her own expense or may wish to avail himself or herself of any legal services available in the community at little or no cost, such as the Legal Aid Society, Neighborhood Legal Services, or any other sources willing to provide representation for the Blind Licensed Vendor.

6. Reader services or other communication services will be arranged for the Blind Licensed Vendor should he or she so request. Transportation costs and per diem will be provided also to the Blind Licensed Vendor during the pendency of the Evidentiary Hearing, if the location of the hearing is in a city other than the legal residence of the Blind Licensed Vendor.

7. The hearing will be held at a time and place convenient and accessible to the Blind Licensed Vendor requesting a Full Evidentiary Hearing. A hearing held during regular Agency working hours and located at the Agency central office or be deemed as a convenient time and place. The hearing will be scheduled by the Agency within 15 working days of its receipt of such a request, unless the Agency and the Blind Licensed Vendor mutually, in writing, agree to some other period of time. The Blind Licensed Vendor will be notified in writing of the time and place fixed for the hearing and of his or her right to be represented by legal or other counsel. The Blind Licensed Vendor will be provided a copy of the hearing procedures and other relevant information necessary to enable him or her to prepare his or her case for the hearing.

8. The presiding officer at the hearing will be an impartial and qualified hearing official who has no involvement either with the Agency action that is at issue in the hearing or with the administration or operation of the Randolph Sheppard Vending Facility Program. He or she may be a staff member or an official of another state agency or a State Agency Hearing Officer.

9. The presiding officer will conduct a Full Evidentiary Hearing, avoid delay, maintain order and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer will have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing will be open to the public unless the presiding officer for good cause shown otherwise determines.

10. Both the Blind Licensed Vendor and the Agency are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issues.

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11. All papers and documents introduced into evidence at the hearing will be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted will be open to examination by the parties and opportunities will be given to refute facts and arguments advanced on either side of the issues.

12. A transcript will be made of the oral evidence and will be made available to the parties. The Agency will pay all transcript costs and will provide the Blind Licensed Vendor with at least one copy of the transcript.

13. The transcript of testimony, exhibits, and all papers and documents filed in the hearing will constitute the exclusive record for decision.

14. The decision of the presiding officer will set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation and Agency policy. It will contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision will also set forth any remedial action necessary to resolve the issues in dispute. The decision will be made within 15 working days after the receipt of the official transcript. The decision will be mailed promptly to the Blind Licensed Vendor and the Agency.

15. If a Blind Licensed Vendor is dissatisfied with the decision rendered after a Full Evidentiary Hearing, he or she may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education in accordance with 395.13 (A) of the Randolph-Sheppard Regulations, within a reasonable period of time following receipt of the hearing decision.

### **18-14 Vending Facility Equipment and Initial Stock**

A. The Agency will furnish each vending facility with adequate, suitable equipment and initial stocks of merchandise and cash necessary for the establishment and operation of such facility.

B. The right, title to and interest in the equipment and initial stock of each vending facility will be vested in the Agency.

C. In the event a vendor is transferred, promoted or terminated, he or she will be responsible to the Agency for the amount of initial stock in that facility when he or she was placed in it. If there is saleable stock in excess of the initial stock, the Agency will reimburse the Blind Licensed Vendor for the excess amount.

D. In the event a Blind Licensed Vendor is transferred or promoted into a location with insufficient merchandise to operate the facility in accordance to the guidelines set forth in the agreement for that particular location, the South Carolina Commission for the Blind will furnish the necessary inventory to a sufficient operating level.

E. If the vending facility is to be closed, either temporarily or permanently, the Blind Licensed Vendor will sell out his or her entire saleable stock and will reimburse the Agency for the amount of initial stock in the vending facility when he or she was placed in it.

F. Vending machines that are in direct competition with a vending facility will be considered as a part of the vending facility equipment. The Blind Licensed Vendor will receive the net proceeds from vending machines in direct competition. Vending facilities on non-Federal property which do not receive net proceeds from vending machines in direct competition will not be subject to this policy. A Blind Licensed Vendor will be required to pay a service charge to the supplier if the Blind Licensed Vendor is physically unable to load and supply the merchandise needed for the vending machine.

**18-15 Maintenance and Replacement of Equipment**

- A. The Agency will maintain (or cause to be maintained) all vending facility equipment in good repair and in attractive condition, and will replace (or cause to be replaced) worn out or obsolete equipment as required to assure the continued successful operation of the facility, subject to the availability of funds.
- B. Maintenance and repair of equipment will be authorized by the BEP Counselor with the approval of the BEP Director upon the request of the Blind Licensed Vendor.
- C. All repairs of equipment by other companies must be completed within 15 working days. If not, the BEP Counselor will be required to intervene to hasten the completion of the repair and return of the equipment.
- D. Each Blind Licensed Vendor will be responsible for taking reasonable care of the equipment in the facility and will carry out routine day-to-day preventative maintenance procedures as required.

**18-16 Distribution and use of Income from Vending Machines on Federal Property**

- A. Vending machine income from vending machines on federal property which has been disbursed to the Agency by a property managing department, agency or instrumentality of the United States under the vending machine income sharing provisions in Section 395.32 of the federal regulations will accrue to each Blind Licensed Vendor operating a vending facility on such federal property in an amount not to exceed the average net income of the total number of Blind Licensed Vendors within the State, as determined each fiscal year on the basis of each prior year's operation, except that the vending machine income will not accrue to any Blind Licensed Vendor in any amount exceeding the average net income of the total number of Blind Licensed Vendors in the United States.
- B. No Blind Licensed Vendor will receive less vending machine income than he or she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.
- C. No limitation will be imposed on income from vending machines combined to create a vending facility, when such facility is maintained, serviced, or operated by a Blind Licensed Vendor.
- D. The Agency will retain vending machine income disbursed by a property-managing department, agency or instrumentality of the United States, in excess of the amounts eligible to accrue to Blind Licensed Vendors.
- E. The Agency will disburse vending machine income to the Blind Licensed Vendors on a quarterly basis.
- F. Vending machine income retained by the Agency will be used for the establishment and maintenance of retirement or pension plans, health insurance contributions, and the provision of paid sick leave and vacation time for Blind Licensed Vendors, if it is so determined by a majority vote of the Blind Licensed Vendors, after each Blind Licensed Vendor has been furnished information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes will be used for one or more of the following: maintenance and replacement of equipment, purchase of new equipment, management services, and assuring a fair minimum return to Blind Licensed Vendors.
- G. The money held in the Operator's Benefit Account will be kept as a reserve fund. When the South Carolina Commission for the Blind does not have any money from which to draw, it will be used for maintenance and repair of facilities or purchase needed equipment for facility.

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### **18-17 Election, Organization and Function of the Business Enterprise Program Vendors Committee**

- A. The Agency will conduct among the Blind Licensed Vendors in the program a biennial election of a BEP Vendors Committee which will be representative, to the extent possible, of all such Blind Licensed Vendors on the basis of factors such as geographical location, vending facility type, and proportionally representative of Blind Licensed Vendors on Federal, State and private property.
- B. The BEP Vendors Committee will be composed of one (1) Blind Licensed Vendor from each Business Enterprise Program District and one Blind Licensed Vendor elected at large.
- C. A BEP Vendors Committee member will be nominated and elected among all the Blind Licensed Vendors in a district at a general meeting of all Blind Licensed Vendors within that district. Nominations and elections will be conducted in accordance with Robert's Rules of Order.
- D. A Blind Licensed Vendor who is elected to the BEP Vendors Committee must be working in the district they are elected to represent, unless the Blind Licensed Vendor is unable to transfer due to no fault of the Blind Licensed Vendor. The BEP Vendors Committee Representative must reside within a 50-mile radius of the district he or she works.
- E. The term of membership for a Committee Member will be two (2) years.
- F. A member may serve any number of consecutive terms if he or she is re-elected by a majority of the Blind Licensed Vendors voting from his or her district.
- G. The BEP Vendors Committee will elect a Chairman from among its members to serve for a period of two years. A chairman can serve no more than three consecutive terms.
- H. The BEP Vendors Committee will meet on a quarterly basis at the Ellen Beach Mack Rehabilitation Center. The Chairman may call for special meetings as necessary.
- I. The Chairman may establish subcommittees when necessary to carry out specific tasks.
- J. The Agency will provide the BEP Vendors Committee with such secretarial and financial support as necessary for the BEP Vendors Committee to carry out its functions.
- K. The Agency will provide meeting space for the BEP Vendors Committee meetings.
- L. The Agency will reimburse the BEP Vendors Committee Members for expenses incurred in participating in the BEP Vendors Committee meetings.
- M. The BEP Vendors Committee will:
  - 1. Actively participate with the Agency in major administrative decisions and policy and program development decisions affecting the overall administration of the Agency's Vending Facility.
  - 2. Receive and transmit to the Agency grievances at the request of Blind Licensed Vendors and serve as advocates for such vendors in connection with such grievances.
  - 3. Actively participate with the Agency in the development and administration of a system for the promotion and transfer of Blind Licensed Vendors.

4. Actively participate with the Agency in the development of training and retraining programs for Blind Licensed Vendors.

5. Sponsor, with the assistance of the Agency, meetings and instructional conferences for Blind Licensed Vendors within the state subject to the availability of funds.

N. In order to assure opportunity for effective and constructive active participation by the BEP Vendors Committee, its members will be provided advance written notice from the Agency of matters within its purview that are being considered for decision. Appropriate subcommittees or individual Members will receive written notices of and invitations to attend important discussion or decision making meetings in areas of the subcommittee's interest.

O. The BEP Vendors Committee, in its role of active participant in decision making and administration consistent with Section 395.14 of the Federal Regulations, will have the opportunity to initiate agenda items for BEP Vendors Committee meetings and will do so by notifying the Chairman. Individual Blind Licensed Vendors who wish to suggest items for consideration at BEP Vendors Committee meetings will do so by contacting their district BEP Vendors Committee Representative. The agenda will be set, based on such input, by the Chairman and the Agency. Each Blind Licensed Vendor will receive notification of BEP Vendors Committee meeting time, place, date and agenda. Blind Licensed Vendors are encouraged to express their views on agenda items to their representatives. While Blind Licensed Vendors are welcome to attend committee meetings, they will do so as observers only, and at their own expense. The purpose of the BEP Vendors Committee is to provide representation for each Blind Licensed Vendor through their Elected BEP Vendors Committee Representative.

P. The Agency has the ultimate responsibility for the administration of the State Vending Facility Program. The views and positions of the BEP Vendors Committee and the views and positions of the administration will be submitted to the Agency Board for decision. If the Board does not adopt the views and positions of the BEP Vendors Committee, the Chairman of the Board will notify the BEP Vendors Committee in writing of the decision reached or the action taken and the reasons therefor.

Q. The at large Blind Licensed Vendor will be elected at the BEP Vendor's Annual Meeting by a majority of all Blind Licensed Vendors. The at large Blind Licensed Vendor will be a minority vendor, unless the BEP Vendors Committee's composition exceeds the minority population, the at large Blind Licensed Vendor may be any Blind Licensed Vendor operating a vending facility in South Carolina.

#### **18-18 Access to Program and Financial Information**

Each Blind Licensed Vendor will be provided access to all program and financial data of the Agency relevant to the operation of the Vending Facility Program, including quarterly and annual financial reports upon request, if such disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information. Insofar as is practical, such data will be made available in Braille or recorded tape and at the request of a Blind Licensed Vendor, the Agency will arrange a convenient time to assist in the interpretation of such data.

**Fiscal Impact Statement:** There will be no increased cost to the State or its political subdivisions in implementing these regulations.

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Document No. 2816

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 30

Statutory Authority: S.C. Code Sections 48-2-10 and 48-43-540

R.61-30, *Environmental Protection Fees*

#### **Synopsis:**

The Department is amending R.61-30, *Environmental Protection Fees*, to establish in regulation a Terminal Facility Registration fee. See Discussion of Revision below and the Statement of Need and Reasonableness herein.

Discussion of Revision:

#### SECTION/CHANGE

R.61-30.G(14) A Terminal Facility Registration Fee is added. This fee is authorized by statute and is being established in regulation. The amount of the fee is the same as that collected between 1977 and 2000.

**Instructions:** Amend R.61-30 pursuant to the instruction provided with the text below:

#### **Text:**

#### **Add 61-30.G(14) to read:**

Schedule of Fees

(14) Oil and Gas Annual Fees

|                                     |        |
|-------------------------------------|--------|
| Terminal Facility Registration Fees | \$250. |
|-------------------------------------|--------|

**Fiscal Impact Statement:** There will be no increased costs to the State or its political subdivisions.

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

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

DESCRIPTION OF REGULATION: Proposed Amendment of R.61-30, *Environmental Protection Fees*

Purpose: The Department is amending R.61-30 to establish in regulation a Terminal Facility Registration fee authorized by S.C. Code Section 48-43-540 of the Oil and Gas Act and S.C. Code Section 48-2-10 *et seq.*, the Environmental Protection Fund Act.

Authority: S.C. Code Sections 48-43-540 and 48-2-10 *et seq.*

Plan for Implementation: This regulation, as amended through public comment and Department response, and upon approval of the Board of Health and Environmental Control, General Assembly and publication in the *State Register*, will be incorporated within R.61-30.

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

This amendment to add a terminal facility registration fee for inclusion in R.61-30 is authorized in statute and must be established in regulation. The fee is intended to assist in funding the review and processing of registration certificates and help finance the cost of annual inspections at the facilities. The fee is very reasonable for the amount of work effort that has to be expended to maintain the certification review and issuance program.

**DETERMINATION OF COSTS AND BENEFITS.** Benefits will be to the environment and public health safety of South Carolina. The registration and inspection programs provide the Department an opportunity to review coastal facilities that maintain large volumes of petroleum products that if not adequately designed and maintained could result in releases that would cause major environmental damage to the waters and/or coastal life of the State. These fees are levied on specific and unique industries that potentially pose a distinct environmental threat to the state unlike most industries. Therefore the fee upon these industries is justified and reasonable based on the environmental concerns posed by their operations.

Although not expected to fully fund the registration program, the Department is establishing this fee pursuant to S.C. Code Section 48-43-540 in order to continue to issue registration permits to these terminal facilities.

**UNCERTAINTIES OF ESTIMATES:** There are no uncertainties of estimates relative to costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:** The presence of large quantities of petroleum products, both stored near the coastline as well as involved in vessel to shoreline and vessel-to-vessel transfers, poses a significant threat to the safety of the State's waters and public. This registration program allows the department to: review facility and vessel spill contingency plans; review spill cleanup equipment available to the facility; and review any cleanup contractor agreements that the facilities may have in place to address spill removal activities.

**DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED:** Inability to collect the fee would slow the registration process and create a backlog of certificates awaiting review. This in turn negatively affects the timely turnaround of projects, which may prevent a serious pollution problem. Inadequate oversight creates a potentially harmful situation at these facilities that is contrary to the intent of the General Assembly when the Act was passed.

**STATEMENT OF RATIONALE:** Pursuant to S.C. Code Section 1-23-120.B, R.61-30 is being amended to establish a fee authorized by statute and required to be set by regulation. The amount of the proposed fee is the same as that collected between 1977 and 2000.

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*

**Synopsis:**

The regulatory changes will revise R.61-30, *Environmental Protection Fees*, Section 61-30.G(5) and Section 61-30.G(5)(i) through 61-30.G(5)(ff). The revision increases fees for radioactive material licenses and

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adds fees for reciprocity licenses and general licenses specified in R.61-63. 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. See Discussion below and Statements of Need and Reasonableness and Rationale herein.

Discussion of Revisions:

| <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                                                                                                                                          |
| 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).

**Instructions:** Amend R.61-30 pursuant to each individual instruction provided below with the text of the amendment.

**Text of Amendments:**

**Amend R.61-30.G(5) heading; subsections G(5)-(h) remain the same:**

G(5) Radioactive material licenses including reciprocity and general licenses specified in R.61-63.

**Amend R.61-30.G(5)(i)-(ff) to R.61-30.G(5)(i)-(ee) as follows:**

|                                                   |         |
|---------------------------------------------------|---------|
| (i) Irradiator (unshielded)                       | \$5,994 |
| (j) Irradiator (self-contained)                   | \$313   |
| (k) Large Quantity Source Material                | \$1,250 |
| (l) Industrial Radiography (In-Plant only)        | \$1,119 |
| (m) Industrial Radiography (Temporary Field Site) | \$1,344 |
| (n) General License for Distribution              | \$806   |
| (o) Medical Institution                           | \$707   |
| (p) Teletherapy                                   | \$1,000 |
| (q) Industrial Gauges                             | \$344   |
| (r) Laboratories – Commercial/Medical             | \$325   |
| (s) Educational Institution                       | \$407   |
| (t) Nuclear Pharmacy                              | \$1,244 |
| (u) Medical Private Practice                      | \$588   |
| (v) Moisture/Density Gauge                        | \$325   |
| (w) Gas Chromatograph                             | \$188   |

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|                                      |         |
|--------------------------------------|---------|
| (x) Services Consultants             | \$207   |
| (y) Bone Mineral analyzer            | \$432   |
| (z) Eye Applicator                   | \$432   |
| (aa) Medical/Academic Broad License  | \$2,313 |
| (bb) Well Logging                    | \$1,125 |
| (cc) Mobile Scanning Services        | \$675   |
| (dd) Decontamination/Nuclear Laundry | \$4,375 |
| (ee) All Other                       | \$338   |

### **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:** This amendment will increase fees for Radioactive Materials Licenses and add fees for general licensees and reciprocity licensees. 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:** 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 General Assembly, and publication in the 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 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 these amendments of 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 REGULATIONS ARE 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.

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### Statement of Rationale Pursuant to S.C. Code Section 1-23-120.

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

Document No. 2815  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
CHAPTERS 30 and 61  
Statutory Authority: S.C. Code Section 48-39-50, 48-39-145 (as amended by 2002 Act 248)  
and 48-39-150

R.30-4.      *Decisions on a Permit.*  
R.61-30.     *Environmental Protection Fees.*

### Synopsis:

These regulatory changes will clarify language related to critical area permit application and amendment fees, and the time schedules for critical area permits. No new fees or increases to fees are included in these amendments. Act 248, effective May 15, 2002, amended S.C. Code Section 48-39-145 to raise the critical area permit application fees for minor activities, which are non-commercial/non-industrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. Additionally, this statutory amendment specified an application fee for minor permit amendments. These regulatory amendments make the application and amendment fees consistent with current state law, and add timeframes for amendment processing, which had previously not been specified in regulation. See Discussion below and Statement of Need and Reasonableness herein.

### Discussion of Revisions:

#### SECTION/CHANGE

30-4.H   Delete language requiring an amendment fee equal to the original permit application fee.

61-30.B(22) Add a reference to the *Coastal Tidelands and Wetlands Act*, specifically 48-39-150, in the definition of "Time Schedules".

61-30.G(13)(b)(i) Change the fee for a minor activity to \$250.00 and add exception language for the fee to be \$150.00 for docks with lengths of 100 feet or less.

61-30.G(13)(b)(v) Add new section for fee of \$100.00 for amendments for minor permits that have to be placed on public notice.

61-30.G(13)(b)(vi) Add new section for fee of \$1000.00 for amendments for major permits that have to be placed on public notice.

61-30.H(3)(a)(v)   Add new section for 30-day public notice period for amendments of minor permits.

61-30.H(3)(a)(vi) Add new section for 90-day public notice period for amendments of major permits.

**Instructions:** Amend R.30-4 and R.61-30 pursuant to each individual instruction provided below with the text of the amendment.

**Text of Amendments:****Amend R.30-4.H as follows:**

Amendment to a Permit: An amendment to a permit can be made without the requirements of a new permit if the proposed change on the amendment does not significantly increase the size or change the use of the permitted project. Otherwise, the amendment proposal will require a fee, a newspaper notice and will be placed on public notice by DHEC-OCRM.

**Amend R.61-30.B(22) as follows:**

(22) "Time Schedules" In accordance with S.C. Code Sections 48-2-70 and 48-39-150, a "schedule of timely review" for purposes of this regulation shall begin when the applicant is notified that the application is administratively complete or within ten days of receipt of the application, whichever comes first; and end when a final decision is rendered. It will include required technical review, required public notice, and end with a final decision by the Department to issue or deny the permit. The time schedule may be tolled or extended in accordance with the conditions stipulated in Section H(1) of this regulation.

**Amend R.61-30.G(13)(b) as follows:****(b).Critical Area Permit Application Fees**

- (i). Minor activity: \$250.00, except for docks 100 feet or less in length for which the fee will be \$150.00
- (ii). Major activity: \$1000.00
- (iii). Extensions or transfers of minor permits: \$25.00
- (iv). Extensions or transfers of major permits: \$100.00
- (v). Amendments for minor permits which must be placed on public notice: \$100.00
- (vi). Amendments for major permits which must be placed on public notice: \$1000.00

**Amend R.61-30.H(3) as follows:****(3). Coastal Zone Management Program.****(a). Critical Area Permits**

- (i). Minor activities: 30 days
- (ii). Major activities: 90 days
- (iii). Extensions or transfers of minor activity permits: 15 days
- (iv). Extensions or transfers of major activity permits: 30 days
- (v). Amendments of minor activity permits: 30 days
- (vi). Amendments of major activity permits: 90 days

**Fiscal Impact Statement:**

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

**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:**

R.30-4.H, *Amendment to a Permit.*

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R.61-30.B, *Definitions*.

R.61-30.G, *Schedule of Fees*.

R.61-30.H, *Time Schedules*.

Purpose of Regulation: Pursuant to Act 248, effective May 15, 2002, S.C. Code Section 48-39-145 was amended to raise the critical area permit application fees for minor activities which are non-commercial/non-industrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. Additionally, this statutory amendment specified an application fee for minor permit amendments. The amendment revises R.61-30.G(13) regarding the application fee for minor, private activities to bring the Coastal Zone Management Program fee schedule current for consistency with state law.

Prior to passage of Act 248, fees for significant amendments to both major and minor permits were equal to the original application fee. R.61-30.G(13)(v) and (vi) is added to specify amendment fees consistent with the minor amendment fee now specified in statute, and the major amendment fee currently described in R.30-4.H as equal to the application fee. R.30-4.H is amended to conform to the amendment fees in R.61-30.

Additionally, the amendment revises R.61-30.H(3) to add timeframes for amendment processing. R.61-30.B(22), "Time Schedules" is also updated to add a reference to Section 48-30-150.

Legal Authority: S.C. Code Section 48-39-50, 48-39-145 (as amended by 2002 Act 248) and 48-39-150.

Plan for Implementation: The amendments will be incorporated into R.61-30.B, G(13)(b) and H(3) upon approval of the General Assembly, and publication in the State Register. The amendments will be implemented, administered, and enforced by existing staff and resources.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary to reflect recent changes in law.

DETERMINATION OF COSTS AND BENEFITS: Promulgation and administration of this amendment is estimated to have minimal economic impacts to entities regulated. South Carolina Code Section 48-39-145 already requires the fee amounts included in these regulations. See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments will improve the Department's ability to manage public usage of coastal resources by providing critical revenue to support administration of the program, and will enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

### **Statement of Rationale Pursuant to S.C. Code Section 1-23-120.B:**

On May 15, 2002, Act 248 became effective. This Act amended the State's policy regarding the critical area permit application fees for minor activities that are non-commercial/non-industrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. These regulatory amendments are necessary to comply with the change in law.

Document No. 2810

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
DIVISION OF LABOR, OFFICE OF ELEVATOR AND AMUSEMENT RIDES**

Chapter 71

Statutory Authority: 1976 Code Sections 41-18-120

**Synopsis:**

The Office of Elevator and Amusement Rides is reducing and standardizing the fee structure for annual permits, providing evidence of general liability insurance, protecting from inappropriate disclosure information obtained from official inspections, and requiring that special inspectors conduct all follow up safety related inspections and abatement inspections. Regulation 71-4700(1)(A) is amended to reflect proper name of the agency and division. Regulation 71-4700 (2) is amended to reduce and simplify the fee structure for annual permit. An inspection report no longer has to be notarized. Regulation 71-4800(2) deletes incorrect language and establishes liability insurance requirements for special inspectors of amusement rides that are consistent with requirements for special inspectors of elevators. Regulation 71-4800(5) is a new regulation prohibiting special inspectors from unauthorized disclosure of information and establishing penalties for unauthorized disclosure. Regulation 71-4800(6) is a new regulation concerning inspections and paperwork required from special inspectors.

**Instructions:**

Regulation 71-4700 1.A. amended, 1.B. remains the same, and 2. amended

Regulation 71-4800 2. amended; all others remain the same

Regulation 71-4800 5., 6. added

**Text:**

71-4700 Fee Schedule.

1.A. Upon application for a permit with a request for inspection by the South Carolina Department of Labor, Licensing and Regulation, Division of Labor, an annual fee shall be charged at the rate of:

Kiddie device \$50.00

Major/spectacular devices \$100.00

Mobile/ fixed roller coasters \$250.00

2. Any application for annual permit which is accompanied by an inspection report by an approved special inspector shall be charged an annual permit fee at the rate of \$35.00 for each device covered by that permit application.

71-4800 Qualifications of Approved Special Inspectors.

2. Each applicant for approval as a special inspector shall submit with his annual application evidence of insurance against errors and omissions (or approved general liability insurance) covering inspections of amusement rides and devices in an amount of no less than \$500,000 per occurrence, procured from one or more insurers licensed to transact insurance in South Carolina or approved as a non-admitted surplus lines carrier for risks located in this State. Each policy, by its original terms or an endorsement, shall obligate the insurer that it will not cancel, suspend, or nonrenew the policy without thirty (30) days written notice of the proposed cancellation, suspension, or nonrenewal and a complete report of the reasons for the cancellation,

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suspension, or nonrenewal being given to the Director of the Department of Labor, Licensing and Regulation. In the event the liability insurance is cancelled, suspended or nonrenewed, the insurer shall give immediate notice to the Director.

5. No special inspector shall use or disclose information gained in the course of or by reason of his official position for any purpose other than making official inspections. Any special inspector who receives compensation to influence his inspections may have his license revoked.

6. Special inspectors shall conduct all follow up, safety related complaint inspections, and abatement inspections as called for by the division and shall be responsible for submitting all associated paperwork.

### **Statement of Rationale:**

There was no scientific or technical basis relied upon in developing the regulation.

### **Fiscal Impact Statement:**

There will be no additional cost incurred by the State or any political subdivision.

Resubmitted May 6, 2003

Document No. 2818

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**DIVISION OF LABOR, OFFICE OF ELEVATORS AND AMUSEMENT RIDES**  
Chapter 71

Statutory Authority: 1976 Code Sections 41-16-40 and 41-16-70

### **Synopsis:**

The Office of Elevator and Amusement Rides is amending Regulation 71-5500(1)(b) to reduce the frequency of routine inspection of certain low use specialized elevator facilities and to amend the inspection fee schedule respectively at 71-5600 to reflect these changes. Regulation 71-5300 (2) deletes the following second sentence: All operating certificates shall be valid for a period of one (1) year from the date of issuance, except where no inspector is available. This deletion is necessary so that it will not conflict with new language in 71-5500(1)(b). Regulation 71-5500(1)(b) is amended to eliminate the renewal inspection for dumbwaiters. Regulation 71-5500(1)(c) Frequency of inspection for handicapped lifts is amended from once every two (2) years to once every five (5) years. Regulation 71-5500(1)(d) is added and indicates dumbwaiters, manlifts, television tower elevators, and special purpose personnel elevators will now be inspected every seven years. Regulation 71-5600 (2)(A)(1) deletes routine inspection fees for dumbwaiters to reflect new language in 71-5500(1)(b). Regulation 71-5600 (2)(A)(2) is added to reflect fees for operating certificates.

### **Instructions:**

Regulation 71-5300 (2) delete second sentence; conflicts with new language in 71-5500(1)(b).

Regulation 71-5500(1) and 1(a) remain the same; 71-5500(1)(b) amended; 71-5500(1) (c) (d) were added.

Regulation 71-5600 (2)(A) amended and indicates subsection (1); 71-5600(2)(A)(2) was added.

**Text:**

## 71-5300 (2) Registration and Operating Certificate.

A person, firm, or corporation shall not operate any facility serving any building or structure without a certificate of registration and an operating certificate issued by the Commissioner of Labor.

## 71-5500. Inspections.

1. All components, devices, and equipment, structures and other related items for facilities shall be inspected upon initial installation or registration, or at the time of alteration or repair prior to issuing an operating certificate and a minimum of one (1) time per year thereafter, prior to renewing an operating certificate.

Exceptions:

- a) All nuclear facilities employing high radiation shall be inspected at least once every two (2) years or before use by workers during routine plant shutdown. Such inspections may be scheduled to coincide with routine plant shutdown.
- b) Dumbwaiters shall be inspected each time they are installed or altered.
- c) Handicap lifts shall be inspected every five (5) years.
- d) Manlifts, television tower elevators and special purpose elevators shall be inspected every seven (7) years.

## 71-5600. Fee Schedules.

## 2. Operating Certificate:

A. (1) The fee for an annual operating certificate, after registration, whether initial or renewal, with inspection by the South Carolina Department of Labor shall be as follows:

| Number of Floors | Fee      |
|------------------|----------|
| 2 to 5           | \$125.00 |
| 6 to 12          | \$150.00 |
| 13 and above     | \$175.00 |

2) The fee for an operating certificate, after registration whether initial or renewal, with inspection by the South Carolina Department of Labor, Licensing and Regulation shall be as follows:

| Type of Elevator | Fee                        |
|------------------|----------------------------|
| Handicap lifts   | \$75.00 every five years   |
| Manlifts         | \$200.00 every seven years |
| Television tower | \$300.00 every seven years |

## Special Purpose Personnel Elevators:

|                     |                            |
|---------------------|----------------------------|
| 2-5 floors          | \$125.00 every seven years |
| 6-12 floors         | \$150 every seven years    |
| 13 and above floors | \$175.00 every seven years |

**Statement of Rationale:** There was no scientific or technical basis relied upon in developing the regulation.

**Fiscal Impact Statement:** There will be no additional cost incurred by the State or any political subdivision.

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Document No. 2826

### DEPARTMENT OF REVENUE

#### CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

#### 117-302.5 Machines

##### **Synopsis:**

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.

**Instructions:** Amend SC Regulation 117-302.5 to add information concerning material handling machinery and/or mechanical conveyors.

##### **Text:**

#### 117-302.5 Machines

Machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, and the replacement parts and attachments to such machines, are exempt from the sales and use tax under Code Section 12-36-2120(17).

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines are also exempt, provided the parts, attachments or replacements are used on or in the operation of such machines, manufactured for use on or in the operation of such machines, necessary to the operation of such machines, and must be customarily so used. These restrictions are interpreted to mean that the part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustment, (except as stated below) and that it is a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This, of course, exempts all parts and attachments without which the machine would do no work, and, in addition, it exempts parts and attachments designed to increase the efficiency of the machine.

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.

Manufacturers, processors, compounders, miners or quarriers are entitled to purchase at wholesale, free of the sales or use tax, materials used by them in the building of machines for the purpose of manufacturing or compounding tangible personal property for sale. It should be noted that only those materials are exempt to manufacturers, processors, compounders, miners or quarriers which are used by them in building machines for the purpose of manufacturing or compounding tangible personal property for sale. This ruling would not be for application in the case of the use of property in the nature of building materials from which there is erected a "structure," which upon completion might be used for producing tangible personal property for sale.

Electricity is tangible personal property and is characterized as such in the law. Therefore, its production is considered as manufacturing and all machinery used for the generation, such as boilers, engines, condensers, generators, and transformers and their attachments, are exempt. Electrical equipment used as direct controls of machinery used in manufacturing is considered as part of manufacturing machinery and as such is exempt. All wires, fixtures, etc., used in lighting are taxable.

Materials or equipment which might constitute a machine or machinery when not used for processing or manufacturing are not exempted.

This exemption applies to:

- (a) trucks too large to be lawfully used upon the highways of this state, when used in quarry pits for transporting rock or granite from the blasting site to the crushing machine.
- (b) sand handling and sand condition machines used by manufacturers or processors for conditioning and transporting, while in process, and for use in mold making.
- (c) tanks which are a part of the chain of processing operations.
- (d) patterns which become parts or attachments for molding machines when purchased by a manufacturer for his use.
- (e) mechanically operated devices used in making molds from sand for use in manufacturing tangible personal property for sale.
- (f) machines used in measuring, or weighing, and packaging by manufacturers, compounders and processors when such machines are a part of the "production line" machinery and are used to put the product in condition for sale on the open market for the purpose for which it was produced.
- (g) machines used in weighing and sacking cement and lime when used by the manufacturer.
- (h) machines used to measure and sack corn meal when used by the manufacturer.

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(i) machines used by soft drink bottlers for measuring and bottling their product.

(j) transformers used in manufacturing and processing tangible personal property for sale, used by producers or distributors of electricity which process the electricity, and all transformers used by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery. Capacitors and voltage regulators are similar to and have the same exemption as transformers.

(k) machines used by cotton ginner in their processing operations.

(l) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in processing milk for sale. The machine exemption does not extend to cover milking machines.

(m) boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing tangible personal property for sale.

(n) machines used by persons in the business of producing scrap iron and other metals from junk for resale to steel mills and/or foundries, such as hydraulic baling presses (to compress sheet steel into bales), cranes (to feed scrap metals to baling press), and alligator shears (to cut scrap steel to predetermined sizes).

(o) machines used by dental laboratories in manufacturing for sale plates, bridgework, artificial teeth and other prosthetic devices.

(p) machines used in processing and manufacturing by electric power companies including all producing stationary machines in an electric power generating house, stationary, processing machines located in substation houses and transformers, pole or otherwise.

(q) starters, switches, circuit breakers and other electrical equipment which are parts of, or attachments of machines, come within the machine exemption. In order to be exempt this equipment must be either attached directly to the machine or be immediately adjacent thereto. Switchboards and control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. (Note, however, that, switchboards, automatic or manually operated, which serve to operate exempt machinery may be classified a part or attachment thereto, provided, same are attached thereto or located within the same structure or compound.) The general rule is that power distribution machinery for operating machines used in processing and manufacturing tangible personal property which starts at the main switch within the factory building or compound is exempt.

(r) machines used directly in the wood preserving process by persons engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale.

(s) gas pressure regulators located in the lead off from the gas main.

(t) machines used directly in the meatpacking process by meatpackers whose activities include the curing of meats and the production of animal by-products such as lard, sausages, or tankage.

(u) machines used directly by ice manufacturers in manufacturing or compounding ice for sale.

(v) machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials. This exemption applies to the pipes and duct used to distribute the processed air to the production areas within the plant.

- (w) recording instruments attached to manufacturing machines.
- (x) machines used directly by a manufacturer in the tire recapping process.
- (y) machines used by municipalities in processing or compounding water for sale.
- (z) belting purchased for use on a particular machine used in manufacturing tangible personal property for sale even though such belting may not be purchased to the exact length required.
- (aa) machines manufactured for and customarily used in removing sawdust from saws in sawmills manufacturing lumber for sale when such machines are attached to or a part of the sawing mechanism and machines manufactured for and customarily used to remove waste material from planners, edgers, and other manufacturing machines used in sawmills manufacturing lumber for sale when such machines are attached to or a part of the planner, edger, or other manufacturing machine. Note, however, the removal or disposal of waste materials is not of itself a manufacturing process on which a claim for exemption could be based. The waste removal machinery must be an attachment of an exempt machine to come within the exemption.
- (bb) machines purchased by persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills.
- (cc) insulation for pipe coverings, tank coverings, and boiler insulation purchased by a paper manufacturer from the vendor in its final prefabricated form for a specific insulation job, provided it does not have to be cut and fitted at the paper mill. Certain fabrication is permissible around valve openings, pipe openings at pipe joints, etc. Note, where insulation is purchased in blocks, such blocks are to be considered as taxable, except as noted above with respect to the purchase of material in building a machine used in manufacturing, processing, or compounding tangible personal property for sale.

This exemption does not apply to:

- (a) warehouse machines used only for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products.
- (b) storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant.
- (c) power lines bringing electricity into the plant.
- (d) dippers used for measuring purposes in a textile bleachery, dye or finishing plant.
- (e) machines used for maintenance purposes.
- (f) pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to water treatment plant, or from water treatment plant itself.
- (g) piping furnished and installed along with pump houses and well connections by a contractor when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturer of paper.

**Fiscal Impact Statement:**

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

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### 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)).