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Document No. 4197

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Section 30-4-45

61-117. Access to Restricted Information

**Synopsis:**

 This regulation will implement provisions of the South Carolina Freedom of Information Act that require the Department of Health and Environmental Control, as custodian of information, the unrestricted access to which could increase the risk of acts of terrorism, to promulgate regulations to regulate access to this information. Restricted Information includes information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400, 10 CFR 73.21 as well as information identified by the Department to the Attorney General pursuant to S.C. Code Section 30-4-45(B).

 The Notice of Drafting for this regulation was published in the State Register on May 27, 2011.

Discussion of Regulation:

61- 117. Access to Restricted Information

 Section A. Purpose and Scope. This section addresses the purpose and scope and identifies the enabling statute for this regulation. The procedures developed in this regulation are necessary to comply with the South Carolina Freedom of Information Act.

 Section B. Definitions. This section includes definitions for the following six terms: ‘Department’, ‘Governmental functions’, ‘Department’s Headquarters’, ‘Requestor’, ‘Restricted Information’, and ‘Vulnerable zone’.

 Section C. Release of Restricted Information. This section establishes procedures for the release of restricted information to local, state, and federal authorities in the exercise of their official governmental functions.

 Section D. Disclosure in Vulnerable Zone. This section establishes procedures for access to restricted information for individuals who live or work in a vulnerable zone.

 Section E. Special Requests. This section establishes procedures for release of restricted information upon special requests that involve scientific or academic research, advance knowledge about South Carolina’s environment, or otherwise provide benefit to the state.

 Section F. Requests for Restricted and Unrestricted Information. This section addresses the handling of requests for information that involve both restricted and unrestricted information.

 Section G. Customary Charges for Copies. This section addresses the applicability of customary charges for copies of records that are released pursuant to this regulation.

**Instructions:**  Add new Regulation 61-117, Access to Restricted Information, to Chapter 61 regulations.

**Text:**

61- 117. Access to Restricted Information.

 Statutory Authority: Section 30-4-45, S.C. Code of Laws, 1976, as amended

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A. Purpose and Scope.

 This regulation applies to information that has been designated pursuant to Code Section 30-4-45(A) or (B) for release.

B. Definitions.

 1. “Department” means the Department of Health and Environmental Control.

 2. “Governmental functions” means the official activities of a state, federal, or local governmental entity.

 3. “Department’s Headquarters” means the Department’s office at 2600 Bull Street, Columbia, South Carolina.

 4. “Requestor” means the individual or entity requesting access to Restricted Information.

 5. “Restricted Information” means any information in the possession of the Department that is designated and identified by the Department in the written notification to the Attorney General pursuant to S.C. Code Section 30-4-45(B).

 6. “Vulnerable zone” means a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to S.C. Code Section 30-4-45 and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short‑term harm to people or the environment.

C. Release of Restricted Information.

 1. Restricted Information, if not otherwise exempt from disclosure pursuant to applicable law, may be released to state, federal, and local authorities as required to carry out official governmental functions, as follows:

 a. The requestor must appear in person at the Department’s Headquarters and must sign a register and show photographic identification issued by a state, federal or local government agency; and

 b. The requestor must provide a written statement that: describes the intended use of the Restricted Information being requested; describes the format and medium for access to the requested information; attests that the requested information will be for official use only; and certifies that the requested information will not be released further except as required to carry out official governmental functions and in accordance with Code Section 30-4-40(c).

 2. If copies are requested, the requestor must pick them up at the Department’s Headquarters in person, or by official courier. Copies will not be mailed, faxed, e-mailed, or sent by delivery service. An official courier who picks up requested copies must appear in person at the Department’s Headquarters and must sign a register and show photographic identification issued by a state, federal, or local governmental agency.

 3. The Department may provide state, federal or local government officials or their authorized representatives access to Restricted Information that is maintained on an electronic data system provided such access is controlled (eg. password protected) and the information is necessary to carry out official governmental functions.

D. Disclosure in Vulnerable Zone.

 1. Persons living or working within a vulnerable zone will be provided Restricted Information as follows:

 a. The requestor must provide written verification of the location and address of his/her home or place of business along with a photographic identification.

 b. The Department will determine whether the location lies within the vulnerable zone of any facility for which Department records are requested.

 c. If the location for which the Restricted Information is sought does not lie within the vulnerable zone of any facility, the Department will so notify the requestor and will deny the request.

 d. If the location lies within the vulnerable zone of any facility or facilities, the requestor will be provided an opportunity to review the Restricted Information that identifies the facility, shows the vulnerable zone on a local area map, and identifies the nature of the event for which the vulnerable zone was determined.

 2. The requestor may review the Restricted Information at the Department’s Headquarters and may take written notes, but will not be provided with copies or be allowed to make copies, scans, photographs, or otherwise duplicate the information.

E. Special Requests.

 1. Restricted Information, if not otherwise exempt from disclosure pursuant to applicable law, may be released in response to a special request, as follows:

 a. The requestor must demonstrate to the satisfaction of the Department that the Restricted Information, if released, will be used solely for the purpose of conducting academic or scientific research, advance knowledge about South Carolina’s environment, or otherwise be of benefit to the state;

 b. The requestor must appear in person at the Department’s Headquarters and must sign a register and show photographic identification issued by the agency or organization for which the requestor is conducting research; and

 c. The requestor must provide a written statement that: describes the intended use of the Restricted Information being requested; describes the format and medium for access to the requested information; provides that the requested information will be for research purposes only; and certifies that the requested information will not be released further.

 2. If copies are requested, the requestor must pick them up at the Department’s Headquarters in person, or by official courier. Copies will not be mailed, faxed, e-mailed, or sent by delivery service. An official courier who picks up requested copies must appear in person at the Department’s Headquarters and must sign a register and show photographic identification issued by the agency or organization for which the requestor is conducting research.

F. Requests for Restricted and Unrestricted Information.

 1. Upon receipt of a request that seeks both Restricted Information and unrestricted information, the Department will segregate restricted and unrestricted information in response to the request.

 2. Those documents containing only unrestricted information will be provided in accordance with normal Department procedures. So much of the request as seeks Restricted Information will be responded to in accordance with Code Section 30-4-40(c) and this regulation.

G. Customary Charges for Copies.

 The Department’s customary charges authorized in S.C. Code Section 30-4-30 for searching and making copies of records are applicable to requests for release of Restricted Information covered by this regulation.

**Fiscal Impact Statement:**

 There will be no cost to the State General Fund. Staff anticipates that there will be no additional cost to the Department as the implementation of this regulation will be managed by existing staff. There will be no additional cost to local governments.

**Statement of Need and Reasonableness:**

 This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115.

DESCRIPTION OF REGULATION: New Regulation 61-117, Access to Restricted Information.

 Purpose: The purpose of this regulation is to implement the provisions of S.C. Code Section 30-4-45 that require the Department, as custodian of information, the unrestricted access to which could increase the risk of acts of terrorism, to promulgate regulations to regulate access to this information.

 Legal Authority: Section 30-4-45, S.C. Code of Laws, 1976 (2007).

 Plan for Implementation: Upon approval and publication as a final regulation in the State Register, a copy of the regulation will be available electronically on the South Carolina Legislature Online website by Document Number at <http://www.scstatehouse.gov/regnsrch.php> and also on the Department’s Regulatory website in its DHEC Regulation Development Update at <http://www.scdhec.gov/regulatory.htm>. Printed copies will also be available for a fee from the Department’s Freedom of Information office. Existing staff of the Department’s Freedom of Information office, in consultation with the Office of General Counsel, will coordinate implementation of the regulation within the Department.

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

 The need for this regulation is stated in the South Carolina Freedom of Information Act, S.C. Code Section 30-4-40, as follows:

“(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with chapter. Sections 30-4-30, 30-4-40, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.”

 S.C. Code Section 30-4-45 directs each agency that is the custodian of such information to promulgate regulations establishing procedures for the access to Restricted Information. The regulation is needed to comply with the requirements of the South Carolina Freedom of Information Act. The regulation can be implemented using existing staff without impact to the General Fund. It establishes procedures for access to Restricted Information in accordance with the Act. It aids in the protection of public health, public safety, and the environment by ensuring that such information is restricted except to the extent allowed by law.

DETERMINATION OF COSTS AND BENEFITS:

 Internal Costs: Implementation of this regulation will not require additional resources beyond those currently allocated to the Department.

 External Costs: There will be no additional costs beyond the customary charges to governmental agencies that request Restricted Information to carry out their governmental functions or to special requestors of Restricted Information. By law, persons within a vulnerable zone may view Restricted Information, but may not remove or reproduce it, therefore, there will be no cost to those persons.

 External Benefits: There will be a benefit to state, federal, and local authorities that need access to Restricted Information to carry out their official governmental functions. There will be a benefit to persons who live in a designated vulnerable zone because it will allow them to view Restricted Information concerning their community. There will be a benefit for special requests approved by the Department to further scientific and/or academic research that advances knowledge about the environment in South Carolina. The procedures established by regulation will provide a benefit to the general public by ensuring greater protection from the unrestricted access to information that could be used in a manner that increases the risk of acts of terrorism in South Carolina.

UNCERTAINTIES OF ESTIMATES:

 None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

 There will be no adverse effect on the environment and public health. The proposed regulation will ensure greater protection of public health, public safety, and the environment by having established procedures for access to Restricted Information.

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

 Without established procedures for access to Restricted Information, such release to unauthorized persons could increase the possibility of the use of such information in a manner that increases the risk of acts of terrorism in South Carolina.

**Statement of Rationale:**

 S.C. Code Section 30-4-45 directs the Department, as custodian of information, the unrestricted access to which could increase the risk of acts of terrorism, to promulgate regulations to regulate access to this information.