

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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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.

2024 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	1/12	2/9	3/8	4/12	5/10	6/14	7/12	8/9	9/13	10/11	11/8	12/13
Publishing Date	1/26	2/23	3/22	4/26	5/24	6/28	7/26	8/23	9/27	10/25	11/22	12/27

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 212-4500.

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 *South Carolina State Register* is available electronically through the South Carolina Legislature Online website at www.scstatehouse.gov, or in a printed format. Subscriptions run concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for the printed format is \$90.00 plus applicable sales tax. Payment must be made by check payable to the Legislative Council. To subscribe, complete the form below and mail with payment.

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In order by General Assembly review expiration date
 The history, status, and full text of these regulations are available on the
 South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY	HOUSE COMMITTEE	SENATE COMMITTEE
5145	SR48-2		Child Support Guidelines	01/13/2024	Dept of Social Services	Regs and Admin Procedures	Judiciary
5175	SR48-4		Plant Pests	03/11/2024	Clemson University	Regs and Admin Procedures	Ag and Nat Resources
5136	SR48-4		Certification of Need for Health Facilities and Services	04/04/2024	Dept of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
5111			Campaign Practices and Reports	05/08/2024	State Ethics Commission	Regs and Admin Procedures	Judiciary
5112			Contested Case Procedure	05/08/2024	State Ethics Commission	Regs and Admin Procedures	Judiciary
5113			General	05/08/2024	State Ethics Commission	Regs and Admin Procedures	Judiciary
5115			Statement of Economic Interests and Contract Disclosure Forms	05/08/2024	State Ethics Commission	Regs and Admin Procedures	Judiciary
5114			Lobbyists, Lobbyist's Principals and Rating Entities	05/08/2024	State Ethics Commission	Regs and Admin Procedures	Judiciary
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5182			Unclassified Facilities and Programs	05/08/2024	Dept of Disabilities and Special Needs	Regs and Admin Procedures	Medical Affairs
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5183			Article 5, Sewerage Utilities	05/08/2024	Public Service Commission	Regs and Admin Procedures	Judiciary
5177			Article 3, Electric Systems	05/08/2024	Public Service Commission	Regs and Admin Procedures	Judiciary
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5176			Displaying the Flag	05/08/2024	State Board of Education	Regs and Admin Procedures	Education
5184			Article 7, Water Utilities	05/08/2024	Public Service Commission	Regs and Admin Procedures	Judiciary
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5196			R.45-5, Ballot Envelopes and Fold Over Ballot Cards	05/08/2024	State Election Commission	Regs and Admin Procedures	Judiciary
5197			R.45-6, Defective Ballot Cards	05/08/2024	State Election Commission	Regs and Admin Procedures	Judiciary
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5193			R.45-2, Instructions and Certification of Managers and Clerks in the Use of Vote Recorders	05/08/2024	State Election Commission	Regs and Admin Procedures	Judiciary
5198			R.45-7, Ballot Cards, Sealed After Tabulation	05/08/2024	State Election Commission	Regs and Admin Procedures	Judiciary
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5199			R.45-9, Write-in-Ballots, Sealed After Tabulation	05/08/2024	State Election Commission	Regs and Admin Procedures	Judiciary
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5207	Mobile Home Loans, Savings and Loan	05/08/2024	State Board of Financial Institutions	Regs and Admin Procedures	Banking and Insurance
5208	Notice of Intention to Withdraw Shares	05/08/2024	State Board of Financial Institutions	Regs and Admin Procedures	Banking and Insurance
5209	Participation in RFC Loans	05/08/2024	State Board of Financial Institutions	Regs and Admin Procedures	Banking and Insurance
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5231	Residential Group Care Facilities for Children	05/08/2024	Dept of Social Services	Regs and Admin Procedures	Family and Veterans' Services
5240	Pharmacy Benefits Managers	05/08/2024	Dept of Insurance	Regs and Admin Procedures	Banking and Insurance
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5236	Compensation for the Occupational Health and Safety Review Board	05/08/2024	LLR-OSHA	Regs and Admin Procedures	Labor, Commerce and Industry
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5256	State Board of Examiners in Psychology	05/08/2024	LLR-State Board of Ex. in Psychology	Regs and Admin Procedures	Medical Affairs
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5237	Board of Examiners in Speech/Language Pathology and Audiology	05/08/2024	LLR-Ex. in Speech/Language Path & Aud	Regs and Admin Procedures	Medical Affairs
5233	Fee Schedule for the Board of Medical Examiners	05/08/2024	LLR	Regs and Admin Procedures	Medical Affairs
5254	South Carolina Board of Chiropractic Examiners	05/08/2024	LLR-SC Board of Chiropractic Examiners	Regs and Admin Procedures	Medical Affairs
5244	State Licensing Board for Contractors	05/08/2024	LLR-State Licensing Board for Contractors	Regs and Admin Procedures	Labor, Commerce and Industry
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5260	Individual Antlerless Deer Tags, Antlerless Deer Limits for Private Lands in Game Zones 1-4, and Youth Deer Hunting Day	05/08/2024	Dept of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
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5248	Building Codes Council	05/08/2024	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
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REGULATIONS SUBMITTED TO GENEAL ASSEMBLY 3

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5265	Minimum Standards for Licensing Hospitals and Institutional Infirmaries	03/18/2025	Dept of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
Permanently Withdrawn					
5255	Office of Elevators and Amusement Rides		LLR–Off of Elev and Amusement Rides	Regs and Admin Procedures	Labor, Commerce and Industry
5227	License Plates		Dept of Motor Vehicles	Regs and Admin Procedures	Transportation

4 EXECUTIVE ORDERS

Executive Order No. 2024-07

WHEREAS, the undersigned has been notified that there presently exists a vacancy in the office of Clerk of Court of Colleton County due to the resignation of Rebecca Hill, effective March 25, 2024; and

WHEREAS, in the event of a vacancy in the office of a county clerk of court, the undersigned is authorized to appoint a suitable person, who shall be an elector of the county, to serve as clerk of court pursuant to sections 1-3-220(2), 4-11-20(1), and 14-17-30 of the South Carolina Code of Laws, as amended; and

WHEREAS, Patricia C. Grant, of Walterboro, South Carolina, is a fit and proper person to serve as Clerk of Court of Colleton County.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby appoint Patricia C. Grant to serve as Clerk of Court of Colleton County until a successor shall qualify as provided by law. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 2nd DAY OF APRIL, 2024.**

**HENRY MCMASTER
Governor**

Executive Order No. 2024-08

WHEREAS, the undersigned has been notified of the passing of Firefighter Michael Douglas Vinson of the Laurens County Fire Department and the Clinton Fire Department, who dutifully served as a firefighter in this State and died in the line of duty; and

WHEREAS, Firefighter Vinson dedicated his life to protecting and serving the people of the State of South Carolina, both with the Laurens County Fire Department and the Clinton Fire Department, as well as in various other capacities, and his loss warrants the people of this State appropriately recognizing his distinguished service and honoring his supreme sacrifice; and

WHEREAS, Title 4, Section 7(m) of the United States Code, as amended, provides that “[i]n the event of . . . the death of a first responder working in any State, territory, or possession who dies while serving in the line of duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff”; and

WHEREAS, section 1-3-470 of the South Carolina Code of Laws, as amended, authorizes the undersigned, on the day of burial or other service for any firefighter in this State who died in the line of duty, to order that all flags on state buildings be lowered to half-staff in tribute to the deceased firefighter and to request that flags over the buildings of the political subdivisions of this State similarly be flown at half-staff for this purpose.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and of these United States and the powers conferred upon me therein, I hereby order that all flags on state buildings be lowered to half-staff from sunrise until sunset on Friday, April 5, 2024, in tribute to Firefighter Vinson and in honor of his selfless service and supreme sacrifice in the line of duty. I request that all flags over the buildings of the political subdivisions of this State similarly be flown at half-staff for this purpose. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 4th DAY OF APRIL, 2024.**

**HENRY MCMASTER
Governor**

Executive Order No. 2024-09

WHEREAS, the undersigned has been notified of the passing of Van Stephen “Steve” Moss, who previously served as a member of the South Carolina House of Representatives; and

WHEREAS, in addition to his dutiful service as a member of the South Carolina House of Representatives, Steve Moss previously served the State of South Carolina as a member of the South Carolina American Revolution Sestercentennial Commission, State Board of Education, Cherokee County School Board, a volunteer firefighter, and in various other state and local capacities; and

WHEREAS, Steve Moss was a dedicated public servant, principled leader, successful businessman, tireless community advocate, and devoted father and family man, and his passing warrants the people of this State further recognizing and appropriately honoring his extraordinary legacy and lifetime of service to the State of South Carolina; and

WHEREAS, Title 4, Section 7(m) of the United States Code, as amended, provides that “[i]n the event of the death of a present or former official of the government of any State, . . . the Governor of that State . . . may proclaim that the National flag shall be flown at half-staff”; and

WHEREAS, section 10-1-161(E) of the South Carolina Code of Laws, as amended, provides that “upon the death of a person of extraordinary stature, the Governor may order that the flags atop the State Capitol Building be lowered to half-staff at a designated time or for a designated period of time.”

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and of these United States and the powers conferred upon me therein, I hereby order that the flags atop the State Capitol be lowered to half-staff from sunrise until sunset on Saturday, April 13, 2024, in honor of Steve Moss and in recognition of his extraordinary legacy and lifetime of service to the State of South Carolina. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 12th DAY OF APRIL, 2024.**

**HENRY MCMASTER
Governor**

6 NOTICES

CLEMSON UNIVERSITY

NOTICE OF GENERAL PUBLIC INTEREST

Clemson University's Department of Plant Industry (DPI) is responsible for surveying, monitoring, and regulating many plant pest species in South Carolina, including the Sweetpotato Weevil (SPW; *Cylas formicarius*). SPW is a significant pest of cultivated sweet potatoes in South Carolina and is monitored by plant pest regulatory agencies across the United States. The distribution of SPW in South Carolina is primarily bound to the coastal counties where the warmer climate and increased occurrence of its preferred alternate host, morning glory (*Ipomea purpurea*), can be found in greater abundance.

South Carolina currently operates with permanent quarantine areas in: Beaufort, Berkeley, Charleston, Colleton, and Jasper counties.

The sweetpotato weevil has been detected by DPI in Dorchester County. Since this first county detection, DPI has worked with the landowner to eradicate the pest while also surveying nearby roadsides and properties to determine whether the infestation is widespread in the county. After several years of continued survey with only isolated eradication success and inconsistent roadside detections, DPI has confirmed that the pest is now widespread and exceeds any current eradication efforts.

Therefore, the Department recommends that Dorchester County be considered fully infested by sweetpotato weevil and included in the current permanent quarantine area listing for this pest. This permanent quarantine declaration shall be effective May 1, 2024, until otherwise changed by DPI. The addition of Dorchester County to the quarantine area should enable DPI to shield other SC counties from the spread of SPW while specifically protecting in-state, national, and international sweetpotato trade with SC farmers not within this quarantine.

If you should have any questions about this expansion of quarantine area or about efforts to control the sweetpotato weevil in South Carolina, please contact:

Dr. Steve Cole
Executive Director of PSA Regulatory Services
College of Agriculture, Forestry, and Life Sciences (CAFLS)
Clemson University
511 Westinghouse Rd.
Pendleton, SC 29670
864.646.2122

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication on **April 26, 2024**, 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 Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201, at (803) 545-4200, or by email at coninfo@dhec.sc.gov.

Affecting Charleston County

Trident Medical Center, LLC d/b/a Trident Medical Center

Addition of 1 rehabilitation bed for a total of 24 rehabilitation beds at a total project cost of \$47,418.00.

Affecting Greenville County**Coram Alternate Site Services, Inc.**

Establishment of a Specialty Home Health Agency to provide home infusion services in Greenville County at a total project cost of \$1,000.00.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**NOTICE OF GENERAL PUBLIC INTEREST****NOTICE OF PUBLIC COMMENT PERIOD FOR SOUTH CAROLINA 2024 ANNUAL MONITORING NETWORK PLAN**

Statutory Authority: S.C. Code Sections 48-1-10 et seq.

The South Carolina Department of Health and Environmental Control (Department) is publishing this Notice of General Public Interest to provide opportunity to comment on the proposed 2024 South Carolina Annual Ambient Air Monitoring Network Plan (Network Plan) to meet obligations to the U.S. Environmental Protection Agency (EPA). This notice also provides documentation of the establishment and maintenance of an air quality surveillance system that consists of a network of state or local air monitoring stations (SLAMS) that includes federal reference method (FRM) and federal equivalent method (FEM) monitors that are part of SLAMS, national core multipollutant monitoring stations (NCore), chemical speciation network (CSN), and special purpose monitor (SPM) stations. The proposed Network Plan includes a statement of whether the operation of each monitor meets the requirements of Appendix E of Title 40, Part 58, Ambient Air Quality Surveillance, of the Code of Federal Regulations (40 CFR 58). As part of this Network Plan, the Department is also including an annual assessment as required under 40 CFR 51.1205(b) for those facilities that demonstrated attainment with the 1-hr Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) as part of the Data Requirements Rule (DRR) using modeled emission rates that were less than the maximum permit allowable rates. The Network Plan is available for public inspection and comment for 30 days prior to submission to the EPA to include any received comments. To be considered, the Department must receive comments no later than 5:00 p.m. on May 28, 2024, the close of the comment period.

The Department is also providing the interested public with the opportunity to request a public hearing on the Network Plan. If requested, the Department will hold a public hearing on June 5, 2024, at 10:00 a.m., in Room 2151 of the Sims Building, 2600 Bull Street, Columbia, South Carolina. Pursuant to 40 CFR 51.102, if the Department does not receive a request for a public hearing by the close of the comment period, 5:00 p.m. on May 28, 2024, the Department will cancel the public hearing. If the public hearing will be held remotely using an alternative method, or if the Department cancels the public hearing, then the Department will notify the public and provide instructions for accessing any remote public hearing (if a hearing is requested) at least one week prior to the scheduled hearing via the Department's Public Notices webpage: <http://www.scdhec.gov/PublicNotices/>. Interested persons may also contact Renee Madden, Air Regulation and Data Analysis Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201; via phone at (803) 898-3822; or email at maddengr@dhec.sc.gov for more information or to find out if the Department will hold the public hearing. A copy of the proposed 2024 South Carolina Annual Ambient Air Monitoring Network Plan is also located on the Department's Public Notices webpage: <http://www.scdhec.gov/PublicNotices/>.

Synopsis:

In October 2006 and in April 2016, the EPA published requirements for an annual monitoring network plan. This Network Plan, as required and described in 40 CFR Part 58.10, Annual Monitoring Network Plan and Periodic Network Assessment, must contain the following information for each monitoring station in the network:

1. The Air Quality System (AQS) site identification number (ID) for existing stations,

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2. Location of each monitoring station, including street address and geographical coordinates,
3. The sampling and analysis method used for each measured parameter,
4. The operating schedule for each monitor,
5. Any proposal to remove or relocate a monitoring station within a period of eighteen months following the network plan submittal,
6. The monitoring objective and spatial scale of representativeness for each monitor,
7. The identification of any sites that are suitable for comparison against the Particulate Matter less than 2.5 microns (PM_{2.5}) NAAQS, and
8. The Metropolitan Statistical Area (MSA), Core-Based Statistical Area (CBSA), Combined Statistical Area (CSA), or other area represented by the monitor.

Any network modifications to SLAMS networks are subject to the approval of the EPA Regional Administrator, who shall approve or disapprove the plan within 120 days of submission of a complete plan to the EPA. This 2024 South Carolina Annual Ambient Air Monitoring Network Plan covers the eighteen-month period from July 1, 2024, through December 31, 2025, and includes all anticipated modifications to the monitoring network.

The DRR annual assessment includes, for the applicable facilities, a comparison of the actual SO₂ emissions at each facility versus the SO₂ emissions included in the 1-hr SO₂ modeling demonstration and a determination as to whether the modeling performed for the DRR is still adequate to demonstrate attainment with the 1-hr SO₂ NAAQS.

SOUTH CAROLINA CONSERVATION BANK

CHAPTER 16

Statutory Authority: 1976 Code Section 48-59-70(M)

Notice of Drafting:

The SC Conservation Bank (SCCB) proposes to draft a new regulation regarding the procurement of appraisal services. Interested persons may submit their comments in writing to J. Raleigh West III, SCCB Director, 2711 Middleburg Dr., Ste 308, Columbia, SC 29204 or by email to admin@sccb.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. on May 28, 2024, the close of the drafting comment period.

Synopsis:

The proposed regulation will address the circumstances under which SCCB may procure independent appraisals of properties subject to SCCB's grant processes and required due diligence.

Legislative review is required.

DEPARTMENT OF EMPLOYMENT AND WORKFORCE

CHAPTER 47

Statutory Authority: 1976 Code Sections 41-29-110 and 41-29-230

Notice of Drafting:

The South Carolina Department of Employment and Workforce proposes amending R.47-6, Benefit Ratio for Zero Taxable Wages. Interested persons may submit comments to Ellen Andrews-Morgan, Director of Governmental Affairs, SC Department of Employment and Workforce, P.O. Box 995, Columbia, SC 29202 or by emailing RegulationComments@dew.sc.gov. To be considered, comments must be received no later than 5:00 p.m. on May 28, 2024, the close of the drafting comment period.

Synopsis:

Unemployment Compensation is a federal-state partnership based upon federal law administered by each state under state law in conformity with requirements set forth in the Social Security Act of 1935 (SSA) and the Federal Unemployment Tax Act (FUTA). Section 3303(a) of FUTA prohibits assignment of an unemployment insurance tax rate less than one percent to a new or newly covered employer with less than one year of experience. To maintain compliance with FUTA, the Department proposes this amendment to R.47-6 to ensure that new employers are assigned a rate not less than one percent.

The Department may also propose other changes to R.47-6, Benefit Ratio for Zero Taxable Wages, as deemed necessary to maintain compliance with federal law. These changes may include corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement to the text of R.47-6.

The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department proposes these amendments for compliance with federal law.

10 EMERGENCY REGULATIONS

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF EXAMINERS FOR LICENSURE OF PROFESSIONAL COUNSELORS, MARRIAGE
AND FAMILY THERAPISTS, ADDICTION COUNSELORS AND PSYCHO-EDUCATIONAL
SPECIALISTS
CHAPTER 36**

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, and 40-75-60

Notice of Drafting:

The Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists proposes to amend R.36-15 to conform the language to statute. Additionally, the Board proposes to review and update Chapter 36 generally to conform with current standards and requirements regarding Psycho-Educational Specialists, particularly but not limited to Regulations 36-13, 36-17, and 36-25. Interested parties may submit comments to Pam Dunkin, Board Executive, Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

Synopsis:

The Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists proposes to amend R.36-15 to conform requirements for reinstatement of a license with the parameters established in S.C. Code Section 40-75-250(D). Additionally, the Board proposes to review and update Chapter 36 generally to conform with current standards and requirements regarding Psycho-Educational Specialists, particularly but not limited to Regulations 36-13, 36-17, and 36-25.

Legislative review of this amendment is required.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA REAL ESTATE COMMISSION
CHAPTER 105**

Statutory Authority: 1976 Code Sections 40-1-70, 40-57-60, 40-57-135 and 40-57-360

Notice of Drafting:

The South Carolina Real Estate Commission intends to promulgate regulations providing clarity and guidance regarding marketing and advertising. Interested persons may submit comments to Erica Wade, Board Executive, Real Estate Commission, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

Synopsis:

The South Carolina Real Estate Commission intends to promulgate regulations providing clarity and guidance regarding marketing and advertising.

Legislative review of this amendment is required.

DEPARTMENT OF SOCIAL SERVICES

CHAPTER 114

Statutory Authority: 1976 Code Sections 63-7-910 and 63-7-2320

Notice of Drafting:

The South Carolina Department of Social Services proposes to amend South Carolina Code of Regulations Chapter 114, by adding Regulation 114-551, Approval of Kinship Family Foster Homes and Kinship Adoptive Homes for Children in Foster Care. Interested persons may submit written comments to Dawn T. Barton, Director of Permanency Management at South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202 or via email at dawn.barton@dss.sc.gov. To be considered all comments must be received no later than 5:00 p.m. on June 7, 2024, the close of the drafting comment period.

Synopsis:

Research shows when children who need foster care placement are placed in the family foster home of kinship caregivers, those children experience more favorable outcomes than children who are placed in the family foster homes of unrelated caregivers. Favorable outcomes include reduced trauma associated with being removed from parents, fewer moves while in foster care, enhanced ability to maintain family and community connections, continuity in school attendance, and greater likelihood of being placed in the same foster home as siblings. These reasons are among those that have caused the South Carolina Department of Social Services to steadily increase efforts to place children who need foster care placement in kinship family foster homes in recent years. However, these efforts have not been without challenges.

Currently, in accordance with previous federal rules, kinship family foster homes are licensed pursuant to the same standards used for unrelated family foster homes. Some prospective kinship caregivers decline placement because they are unable to meet rigorous family foster home licensing standards, often for reasons that are not directly related to child safety. On September 28, 2023, the Administration for Children and Families amended federal rules to allow the states to implement licensing or approval standards for kinship family foster homes that differ from the standards used for unrelated family foster homes. The department is proposing an amendment to Chapter 114 of the South Carolina Code of Regulations to add Regulation 114-551, establishing discrete standards for the approval of kinship family foster homes and kinship adoptive homes that are in alignment with model standards recommended by kinship care service organizations.

Legislative review of these amendments is necessary.

DEPARTMENT OF SOCIAL SERVICES

CHAPTER 114

Statutory Authority: 1976 Code Section 43-1-80

Notice of Drafting:

The South Carolina Department of Social Services proposes to amend South Carolina Code of Regulations Section 114-550, Licensure of Family Foster Homes and Approval of Adoptive Homes for Children in Foster Care. Interested persons may submit written comments to Dawn T. Barton, Director of Permanency Management at South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202 or via email at dawn.barton@dss.sc.gov. To be considered all comments must be received no later than 5:00 p.m. on June 7, 2024, the close of the drafting comment period.

12 EMERGENCY REGULATIONS

Synopsis:

The South Carolina Department of Social Services is the State agency charged with regulating family foster homes for children in the State's foster care system. The South Carolina Department of Social Services is proposing amendments to South Carolina Code of Regulations Section 114-550, Licensure of Family Foster Homes and Approval of Adoptive Homes for Children in Foster Care, to make changes that conform with regulations establishing a new process for licensure or approval of kinship family foster homes.

Legislative review of these amendments is necessary.

DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114
Statutory Authority: 1976 Code Section 63-13-180

Notice of Drafting:

The South Carolina Department of Social Services proposes to amend Regulations 114-500 to 509, Regulations for the Licensing of Child Care Centers. Interested persons may submit written comments to Cynthia S. Lara, Director Child Care Licensing at South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202 or via email at commentsonchildcareregulations@dss.sc.gov. To be considered all comments must be received no later than 5:00 p.m. May 28, 2024, the close of the drafting comment period.

Synopsis:

The Department of Social Services is responsible for establishing and promulgating rules and regulations for the licensure of childcare facilities. The above regulations, regarding licensure and/or registration of child care centers, need amendments to eliminate inconsistencies and enhance clarity. The proposed amendments promote the application of a consistent set of rules and regulations for the licensure and/or registration of childcare facilities. The consistent application of these regulations further the Department's mission to establish standards that protect the health, safety and well-being of children receiving care in childcare facilities.

Legislative review of these amendments is necessary.

DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114
Statutory Authority: 1976 Code Section 63-13-180

Notice of Drafting:

The South Carolina Department of Social Services proposes to amend Regulations 114-510 to 519, Regulations for the Licensing of Group Child Care Homes. Interested persons may submit written comments to Cynthia S. Lara, Director Child Care Licensing at South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202 or via email at commentsonchildcareregulations@dss.sc.gov. To be considered all comments must be received no later than 5:00 p.m. May 28, 2024, the close of the drafting comment period.

Synopsis:

The Department of Social Services is responsible for establishing and promulgating rules and regulations for the licensure of childcare facilities. The above regulations, regarding licensure and/or registration of group child care homes, need amendments to eliminate inconsistencies and enhance clarity. The proposed amendments

promote the application of a consistent set of rules and regulations for the licensure and/or registration of childcare facilities. The consistent application of these regulations further the Department's mission to establish standards that protect the health, safety and well-being of children receiving care in childcare facilities.

Legislative review of these amendments is necessary.

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Document No. 5175
CLEMSON UNIVERSITY
CHAPTER 27

Statutory Authority: 1976 Code Sections 46-9-40 and 46-9-50

- 27-55. Tropical Soda Apple Quarantine.
- 27-56. Benghal Dayflower Quarantine.
- 27-57. Emerald Ash Borer Quarantine.

Synopsis:

To list and describe current plant pests and quarantine areas and conditions related to the control of said plant pests. In this case, the listing is being updated by removing the quarantine areas for Tropical Soda Apple, Benghal Dayflower and Emerald Ash Borer.

Section-by-Section Discussion:

- 27-55. Tropical Soda Apple Quarantine.
Delete text as listed below.

- 27-56. Benghal Dayflower Quarantine.
Delete text as listed below.

- 27-57. Emerald Ash Borer Quarantine.
Delete text as listed below.

The Notice of Drafting was published in the *State Register* on October 28, 2022.

Instructions:

Repeal the regulations as shown below.

Text:

27-55. Repealed.

27-56. Repealed.

27-57. Repealed.

Fiscal Impact Statement:

None.

Statement of Rationale:

These plant pests are now established in South Carolina and across the Southeast. The quarantine efforts have not been effective in stopping the spread of these plant pests and less restrictive efforts can be implemented that will lessen the impact to agriculture and forest industries in South Carolina. Continuing to maintain these quarantines will cost state resources with minimal impacts on reducing the spread of these plant pests. The threat of any state imposing an external quarantine on South Carolina is minimal as these pests are now established in many of our neighboring states.

Document No. 5136
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
 Statutory Authority: 1976 Code Sections 44-7-110 through 44-7-340

61-15. Certification of Need for Health Facilities and Services.

Synopsis:

Pursuant to S.C. Code Sections 44-7-110 et seq., the Department of Health and Environmental Control (“Department”) is required to adopt substantive and procedural regulations considered necessary by the Department and approved by the S.C. Board of Health and Environmental Control (“Board”) to carry out the Department’s Certificate of Need duties. The Department amends R.61-15 for consistency with statutory requirements, to establish an electronic application process, to revise the application format and additional information required for the application process, and update exemption and non-applicability determination processes. The Department’s amendments also include adding, removing, and modifying definitions contained within the regulation. The Department updated language and processes related to public hearings on Certificate of Need applications, the application and review process and related notifications, voidance and extension procedures, and periodic and final reporting requirements regarding issued Certificates of Need. Additionally, the amendments revise the project review criteria and the monetary thresholds that trigger a Certificate of Need review. The amendments also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Department had a Notice of Drafting published in the June 24, 2022, *South Carolina State Register*.

Changes made at the request of the House Regulations & Administrative Procedures Committee by letter dated May 1, 2023:

- Section 101 – Purpose: Deleted to reflect Act 20
- Section 101 – Definitions: Amended to reflect Act 20 and Reorganized
- Section 102 – Applicability: Amended to reflect Act 20 and Reorganized
- Section 103 – Exemption Determination: Amended to reflect Act 20 and Reorganized
- Section 104 – Determinations of Non-Applicability: Amended to reflect Act 20 and Reorganized
- Section 105 – South Carolina Health Plan: Amended to reflect Act 20 and Reorganized
- Section 302 – Additional Information: Amended to reflect Act 20
- Section 305 – Review Time Frames: Amended to reflect Act 20
- Section 701 – Deleted Reference to Certificate of Need Act: Amended to reflect Act 20
- Section 802 – Criteria for Project Review: Added new criteria to reflect Act 20

Section-by-Section Discussion of Amendments:

Section	Type of Change	Purpose
Entire Regulation	Technical Correction	Amended each instance of “these regulations” to “this regulation” for clarity and consistency.
Table of Contents	Technical Correction Reorganization	Amended language and sections to reflect technical corrections and reorganization proposed in regulation text.
Chapter 1 Title	Revision	Amended language to reflect reorganization made in regulation text.

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Section	Type of Change	Purpose
101. Purpose.	Deleted	Deleted to reflect Act 20.
New 101. Definitions. (Former 103)		
Affected Persons	Technical Correction Reorganization	Amended to reformat the definition and move part of the definition to Section 402.
Competing Applicants	Technical Correction Reorganization	Amended to reformat the definition.
Fees	Technical Correction Deletion	Amended to reformat the definition and delete the language that is clarified in other sections of the regulation.
Health Care Facility	Revision Technical Correction	Amended to reformat the definition and to revise language to reflect the statutory definition.
Health Service	Revision Technical Correction	Amended to reformat the definition and to revise language to reflect the State Health Plan definition and to reflect Act 20.
Hospitals	Revision	Amended to reflect Act 20 and reorganized.
Total Project Cost	Technical Correction	Amended to reformat the definition and to correct grammatical errors.
Board Department Like Equipment with Similar Capabilities Person Solely for Research To Develop When Used in Connection With Health Services To Offer When Used in Connection With Health Services	Technical Correction	Amended to reformat these definitions for readability.
Ambulatory Surgical Facility Arrangement for Financing Children and Adolescents in Need of Mental Health Treatment in a Residential Facility	Deletion	Deleted these definitions because they are otherwise defined in the Certification of Need and Health Facility Licensure Act.

Section	Type of Change	Purpose
Facility for Chemically Dependent or Addicted Persons Freestanding or Mobile Technology Hospital Institutional Health Services Nursing Home Psychiatric Hospital Residential Treatment Facility for Children and Adolescents		
Good Cause	Deletion	Deleted because it is no longer defined in statute.
Controlling Interest Indigent Care Majority Ownership Non-Capital Cost	Addition	Added definitions to clarify their meaning in the context of this regulation for the regulated community.
102. Applicability.	Revision	Recodified this section for clarity. Amended to increase the threshold amounts consistent with LAC and recommendation and language from prior legislation.
102.1.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.a.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.b.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.c.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.d.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.

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Section	Type of Change	Purpose
102.1.e.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.f.	Revision	Amended to reflect Act 20. Removed references to Health Care Facility and replaced with nursing home.
102.1.c.	Revision	Amended to increase the threshold amounts consistent with the LAC recommendation and language from prior legislation.
102.1.d.	Technical Correction	Amended to add the word “a” to make it consistent with statutory language.
102.1.e.	Revision	Amended to remove language that is no longer needed in regulation.
102.1.f.	Revision Technical Correction	Amended to increase the threshold amounts consistent with the LAC recommendation and language of prior legislation.
102.3.	Revision Technical Correction	Amended to add a word for consistency with statute and amended to remove language that is no longer needed in regulation. Further amended for clarification.
103. Exemption Determinations. (Former 104)		
103.2.	Addition	Amended to reflect Act 20. Added hospital requirements.
103.2.a.	Addition	Amended to reflect Act 20. Added hospital requirements.
103.2.b.	Addition	Amended to reflect Act 20. Added hospital requirements.
103.3.	Addition	Amended to reflect Act 20. Added Home Health Agency requirements.
104.1.a.	Deleted	Deleted to reflect Act 20.
104.1.b.	Deleted	Deleted to reflect Act 20.
104.1.c.	Deleted	Deleted to reflect Act 20.
103.2.	Technical Correction	Amended for consistency.
103.3.	Amended	Amended to reflect Act 20. The effective date of January 1, 2027, is no longer required.
103.4.	Amended	Amended to reflect Act 20. Amended to exempt crisis

Section	Type of Change	Purpose
		stabilization unit facilities from CON review.
104. Determinations of Non-Applicability. (Former 105)		
104.1.a.	Amended	Amended to reflect Act 20.
104.1.b.	Amended	Amended to reflect Act 20. Amended to increase threshold amounts and to clarify and simplify language in line with LAC recommendation.
104.2.	Technical Change	Amended for consistency.
104.3.	Deleted	Deleted to reflect Act 20.
104.3. (Former 104.4)	Amended	Amended to reflect Act 20.
104.5.	Deleted	Deleted to reflect Act 20.
105. South Carolina Health Plan.	Technical Correction	Amended to correct punctuation and number formatting.
201. Public Notification.	Reorganization Technical Correction	Recodified the section for consistency.
202. Application.	Deletion	Amended to remove language that is no longer needed in regulation.
301. Submission of Application.	Revision	Amended to further streamline the application process, to clarify when the filing fee must be submitted, and to update the name of the Department’s Bureau responsible for administering the CON program.
302. Additional Information.		
Former 302.1.	Deletion	Amended to remove language that is no longer needed in regulation.
New 302.1.	Amended Revision Reorganization	Amended to add clarifying language and to recodify the section. Amended to reflect Act 20.
New 302.2.	Revision Reorganization	Amended to add clarifying language and to recodify the section.
New 302.3.	Reorganization	Recodified the section.
303. Payment of Filing and Application Fees.		
303.1.	Technical Correction	Amended to correct capitalization and grammar.
New 303.2.	Reorganization	Amended to move language from the Definitions section regarding fee clarification.

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Section	Type of Change	Purpose
New 303.3. (Former 303.2)	Technical Correction Reorganization	Recodified the section and corrected grammar for consistency.
304. Relative Importance Criteria.		
304.2.	Revision	Amended to clarify review period.
305. Review Time Frames.		
305.1.	Revision	Amended to remove language that is no longer needed in regulation.
305.2.	Amended Revision Reorganization	Amended to add language from former Section 305.2.a., to add language allowing for electronic notifications, and to correct grammar due to added language. Amended to reflect Act 20.
305.2.a. and b.	Reorganization Deletion	Moved language from 305.2.a to 305.2 for clarity and deleted 305.2.b because the language is no longer needed in regulation.
306. Public Hearing.	Technical Correction	Amended for corrected grammar and consistency.
307. Department Review.	Revision	Amended to clarify Department review
New 308. Certificate of Need Issuance Fee. (Former 309)	Reorganization Revision	Recodified Section 309 to former Section 308, added clarifying language, and amended to remove language that is no longer needed in regulation.
New 309. Project Changes During Review Period. (Former 308)	Revision Reorganization	Amended to add clarifying language and recodified the section.
New 310. Validity of Certificate of Need Issued. (Former 311)	Reorganization Technical Correction	Recodified the section, and corrected punctuation and capitalization.
New 311. Prohibited Contact. (Former 312)	Reorganization	Recodified the section.
401. Appeals.		
401.1.	Revision Technical Correction	Amended to clarify who may appeal a decision and to correct capitalization for consistency.
401.2.	Revision	Amended to clarify who may file a request for final review in opposition to the staff decision on a Certificate of Need.
402. [Reserved]	Deletion	Section no longer needed in the regulation.

Section	Type of Change	Purpose
501. Findings of the Department.	Deletion	Amended to remove language that is no longer needed in regulation.
New 501. Periodic Reports. (Former 502)	Reorganization	Recodified Section 502 to Section 501.
503. Distribution of Procedures Criteria.	Deletion	Amended to remove language that is no longer needed in regulation.
New 502. Review Under Applicable Plan. (Former 504)	Reorganization	Recodified Section 504 to Section 502.
601. Voidance and Extension of Certificates of Need.	Revision Technical Correction	Amended to add language to clarify the voidance (matter of law) and to delete the inconsistent language. Amended to correct grammar and number formatting.
602. Extension Request.	Revision	Amended extension request submission requirements for clarity.
603. Criteria for Extension.	Technical Correction	Amended to correct capitalization.
604. Non-Transferability of Certificate of Need.	Revision Technical Correction	Amended to clarify controlling interest and majority ownership, to remove language not consistent with statute, and to correct grammar.
605. Project Changes After Receipt of Certificate of Need.	Technical Correction	Amended to correct grammar.
607. Periodic Reporting of Certificate of Need Implementation.		
607.1.	Technical Correction	Amended to correct grammar.
607.3.	Technical Correction Addition	Amended to correct punctuation, and to add “a listing of non-capital costs” to the requirements for the final completion report as recommended by the LAC.
701. Penalties.	Amended Revision Technical Correction	Amended to clarify language, remove duplicative language, and to correct grammar. Amended to reflect Act 20.
702. Reserved.	Deletion	Deleted this section because it is not needed in the regulation.
801. Applicability and Weighting.	Revision Technical Correction	Amended to correct references to amended sections. Amended to correct number formatting.
802. Criteria for Project Review.		

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Section	Type of Change	Purpose
802.2.b.	Revision	Amended to correct state agency reference.
802.3.	Amended Revision Reorganization Technical Correction	Amended to remove language that is no longer needed in regulation, corrected punctuation, and recodified items. Amended to reflect Act 20.
802.4.d. through 802.12.	Reorganization	Recodified these sections to new Section 802.7. based on public comments.
New 802.5. (Former 802.13)	Reorganization Technical Correction	Recodified former Section 802.13 to 802.5, and corrected grammar and punctuation.
New 802.6. (Former 802.14)	Reorganization	Recodified former Section 802.15 to 802.6.
New 802.7.a. through e. (Former 802.15-16)	Reorganization	Amended to combine former Sections 802.15 and 802.16 and recodify to 802.7.a through e based on public comments.
New 802.8. (Former 802.17)	Reorganization Technical Correction	Recodified former Section 802.17 to 802.8 and corrected punctuation.
802.18.	Deletion	Deleted language because it is in the application requirements.
New 802.10. (Former 802.20)	Reorganization Revision	Recodified former Section 802.20 to 802.10 and amended language for clarity, consistency, and accuracy.
New 802.11. (Former 802.21)	Reorganization Technical Correction	Recodified former Section 802.21 to 802.10 and corrected punctuation.
New 802.12-13. (Former 802.22-23)	Reorganization	Recodified former Sections 802.22-23 to 802.12-13.
New 802.13. (Former 802.24-25)	Reorganization	Combined former Sections 802.24-25 and recodified as new Section 802.13.
New 802.14. (Former 802.26 and 29)	Reorganization Addition	Combined former Section 802.26 and 802.29 and recodified as new Section 802.14. Changed subsection title to "Zoning and Site Suitability."
802.27.	Deletion	Amended to remove language that is no longer needed in regulation.
New 802.15. (Former 802.28)	Reorganization	Recodified former Section 802.28 to new Section 802.15.
802.30.	Deletion	Deleted language because it will be provided on the web-based application.

Section	Type of Change	Purpose
New 802.16. (Former 802.31)	Reorganization Technical Correction	Recodified former Section 802.31 to new Section 802.16 and corrected for punctuation.
802.32.	Deletion	Deleted language because it will be provided on the web-based application.
New 802.17. (Former 802.33)	Reorganization	Recodified former Section 802.33 to new Section 802.17.
New 802.18.	Addition	Added quantitative quality of care metrics to the project review criteria to align with LAC recommendation.
Appendix	Deletion	Deleted Appendix to streamline the application and to align the regulation for implementation of electronic application process.

Instructions:

Replace R. 61-15 in its entirety with this amendment.

Text:

61-15. Certification of Need for Health Facilities and Services.

(Statutory Authority: 1976 Code Sections 44-7-110 through 44-7-340)

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- Section 101. Definitions
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- Section 103. Exemption Determinations
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CHAPTER 2 – APPLICATION PROCEDURES

- Section 201. Public Notification

CHAPTER 3 – DISPOSITION OF APPLICATION

- Section 301. Submission of Application
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- Section 303. Payment of Filing and Application Fees
- Section 304. Relative Importance Criteria
- Section 305. Review Time Frames
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CHAPTER 1 DEFINITIONS AND APPLICABILITY

SECTION 101. Definitions.

1. **Affected Person.** The applicant, a person residing within the geographic area served or to be served by the applicant, persons located in the health service area in which the project is to be located and who provide similar services to the proposed project, persons who before receipt by the Department of the proposal being reviewed have formally indicated an intention to provide similar services in the future, persons who pay for health services in the health service area in which the project is to be located and who have notified the Department in writing of their interest in Certificate of Need applications, the State Consumer Advocate and the State Ombudsman. Persons from another state who would otherwise be considered “affected persons” are not included unless that state provides for similar involvement of persons from South Carolina in its Certificate of Need process.

2. **Board.** The State Board of Health and Environmental Control.

3. **Competing Applicants.** Two (2) or more persons and/or health care facilities as defined in this regulation who apply for Certificates of Need to provide similar services and/or facilities in the same service area and whose applications, if approved, would exceed the need for this facility type or service. An application shall be considered competing if it is received by the Department no later than fifteen (15) calendar days after a Notice

of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area. All applications received by the Department within fifteen (15) days of publication of the Notice of Affected Persons in the State Register for the first application(s) will be considered to be competing. Any applications received by the Department later than the fifteenth day following publication of the Notice of Affected Persons in the State Register for the first application(s) will not be considered to be competing with the(se) application(s).

4. **Controlling Interest.** Ownership interest in a company (corporation, limited liability company, partnership, or other entity) with enough voting shares or other interests to prevail in any motion. A majority of voting shares or interests is always a controlling interest.

5. **Department.** The S.C. Department of Health and Environmental Control.

6. **Fees.** The Department may charge and collect fees to cover the cost of operating the program. The fees for review of Certificate of Need projects include: (a) initial filing fee; (b) application fee; and (c) issuance fee.

7. **Health Care Facility.** Acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for persons with intellectual disability, narcotic (opioid) treatment programs, and any other facility for which Certificate of Need review is required by law.

8. **Health Service.** At a minimum, clinically related, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health.

9. **Hospital.** A facility that is organized and administered to provide overnight medical or surgical care or nursing care for an illness, injury, or infirmity and must provide on-campus emergency services; that may provide obstetrical care: and in which diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

10. **Indigent Care.** Care provided to persons who do not have health insurance and who are not eligible for other health care such as Medicare, Medicaid, or private health insurance. Indigent care does not include bad debt, contractual adjustments, or care which is reimbursed by a governmental program (Medicare, Medicaid, county indigent program), church, or philanthropic organization.

11. **Like Equipment with Similar Capabilities.** A medical equipment in which functional and technological capabilities are identical to the equipment to be replaced; the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service.

12. **Majority Ownership.** Ownership of more than 50% of the capital stock, limited liability company interests, partnership units, or other equity or ownership interests of a company.

13. **Non-Capital Cost.** Operating costs incurred that relate directly to the current project's implementation excluding exploration costs and capital costs. These costs shall include, but are not limited to, staff time, consultant fees, and legal/litigation costs, to the extent incurred.

14. **Person.** An individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a health care facility, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.

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15. **Solely for Research.** A service, procedure, or equipment which has not been approved by the U.S. Food and Drug Administration (FDA) but which is currently undergoing review by the FDA as an investigational device. FDA research protocol and any applicable Investigational Device Exemption (IDE) policies and regulations must be followed by a facility proposing a project solely for research.

16. **To Develop When Used in Connection With Health Services.** To undertake those activities which on their completion will result in the offering of a new institutional health services or the incurring of a financial obligation in relation to the offering of such a service.

17. **To Offer When Used in Connection With Health Services.** The health care facility holds itself out as capable of providing or as having the means for the provision of, specified health services.

18. **Total Project Cost.** The estimated total capital cost of a project including land cost, construction, fixed and moveable equipment, architect fees, consultant fees, financing costs, and other capital costs properly charged under generally accepted accounting principles as a capital cost. The determination of project costs involving leased equipment or buildings will be calculated based on the total value (purchase price) of the equipment or building being leased.

SECTION 102. Applicability.

1. A person or nursing home as defined in this regulation is required to obtain a Certificate of Need from the Department before undertaking any of the following:

- a. The construction or other establishment of a new nursing home;
- b. A change in the existing bed complement of a nursing home through the addition of one (1) or more beds, or change in the classification of licensure of one (1) or more beds;
- c. An expenditure by or on behalf of a nursing home in excess of five million dollars (\$5,000,000) which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure. Starting July 1, 2025, and every fifth year thereafter, the Department must determine the increase or decrease in the ratio of the Consumer Price Index for all urban consumers (CPI-U), Medical Care Commodities in the US City Average, for the prior five (5)- year period published by the United States Department of Labor; the dollar threshold for expenditures by or on behalf of a nursing home pursuant to this item shall be adjusted accordingly, except that the dollar amount shall never be adjusted below five million dollars (\$5,000,000). The first adjustment shall be made on July 1, 2025, and subsequent adjustments shall be made every fifth year on July 1, or if July 1 is a Saturday or Sunday, the next non-holiday business day following July 1. The Department shall post notice of the adjustments on its website, and the adjusted amount shall become effective as of the date of the posting on the Department's website. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;
- d. A capital expenditure by or on behalf of a nursing home that is associated with the addition or substantial expansion of a health service for which specific standards or criteria are prescribed in the South Carolina Health Plan;
- e. The offering of a health service by or on behalf of a nursing home that has not been offered by the facility in the preceding twelve (12) months and for which specific standards or criteria are prescribed in the South Carolina Health Plan; or
- f. The acquisition of medical equipment by or on behalf of a nursing home which is to be used for diagnosis or treatment if the total project cost is in excess of three million dollars (\$3,000,000). Starting July 1, 2025, and

every fifth year thereafter, the Department must determine the increase or decrease in the ratio of the Consumer Price Index for all urban consumers (CPI-U), Medical Care Commodities in the US City Average, for the prior five (5)- year period published by the United States Department of Labor; the dollar threshold for total project cost for the acquisition of medical equipment to be used for diagnosis or treatment pursuant to this item shall be adjusted accordingly, except that the dollar amount shall never be adjusted below three million dollars (\$3,000,000). The first adjustment shall be made on July 1, 2025, and subsequent adjustments shall be made every fifth year on July 1, or if July 1 is a Saturday or Sunday, the next non-holiday business day following July 1. The Department shall post notice of the adjustments on its website, and the adjusted amount shall become effective as of the date of the posting on the Department's website.

2. Until January 1, 2027, a person or health care facility as defined in this Regulation is required to obtain a Certificate of Need from the Department of Health and Environmental Control before undertaking any of the following:

a. The construction or other establishment of a hospital;

b. A change in existing bed complement of a hospital through the addition of one or more beds or a change in the classification of licensure of one or more beds.

Effective January 1, 2027, no Certificate of Need is required pursuant to this subsection.

3. A home health agency required by the *Licensure of Home Health Agencies Act* to obtain a Certificate of Need prior to licensure shall apply pursuant to the procedures set forth in this regulation.

4. An applicant may not split or combine one (1) expenditure into two (2) or more expenditures for the purpose of avoiding Certificate of Need review, nor may the Department be allowed to combine projects together arbitrarily to bring them under Certificate of Need review.

5. A potential applicant may submit a written request to the Department for a formal determination as to the applicability of the Certificate of Need requirements for a particular project. Such a request shall contain a detailed description of the project, including the extent of modifications, changes in services, and total project costs. Additional information may be requested as may be reasonably necessary to make such applicability determination.

6. These provisions do not apply to acquisitions or changes of ownership of health care facilities, services, and equipment that are already in existence, operational, and providing services in a particular service area, and which have undergone Certificate of Need review and obtained the approval that was appropriate under the law at the time they first entered the relevant service area, so long as the facility or service is not being relocated. For facilities, services, and equipment that have previously undergone Certificate of Need review, the Certificate of Need must be fulfilled prior to a change of ownership.

SECTION 103. Exemption Determinations.

1. The following are exempt from Certificate of Need review, but prior to undertaking these projects, a written determination from the Department is required:

a. The relocation of a licensed hospital in the same county in which the hospital is currently located, as long as:

i. Any Certificate of Need issued to the hospital for a project to be located at the hospital's existing location has been fulfilled, withdrawn, or has expired; and

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ii. The proposed site of relocation is utilized in a manner that furthers health care delivery and innovation for the citizens of the State of South Carolina;

b. The purchase, merger, or otherwise the acquisition of an existing hospital by another person or health care facility.

2. In order to request an exemption, the following information must be provided to the Department in writing, at a minimum:

a. A complete description of the proposed project, including, but not limited to, location of the project, and total project costs;

b. Other documentation requested by the Department in order to determine compliance with this regulation; and

c. Additional information as may be reasonably necessary for the Department to make a determination.

3. The written exemption determination described in this section shall no longer be required effective January 1, 2027.

4. The following projects are exempt from Certificate of Need review and do not require a written determination from the Department: crisis stabilization unit facilities.

SECTION 104. Determinations of Non-Applicability.

1. Certificate of Need review is not applicable to the following, but prior to undertaking the proposed project, a written determination of non-applicability from the Department is required:

a. The construction of a new hospital with up to fifty (50) beds in a county currently without a hospital;

b. Acquisition by or on behalf of a nursing home of medical equipment which is to be used for diagnosis or treatment if any question exists as to whether the total project cost is below three million dollars (\$3,000,000) or adjusted, as in Section 102.1.f.

2. The following information must be provided to the Department in writing, at a minimum:

a. A complete description of the proposed project, including, but not limited to, location of the project, total project costs, capital and/or operational cost;

b. Other documentation requested by the Department in order to determine compliance with this regulation; and

c. Additional information as may be reasonably necessary to make a determination.

3. Certificate of Need review is not applicable to the following projects and a written non-applicability determination from the Department is not required prior to undertaking these projects:

a. Hospitals owned and operated by the federal government;

b. Any federal hospital sponsored and operated by this State;

c. Hospitals owned and operated by the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs, except an addition of one (1) or more beds to the total number of beds of the departments' health care facilities existing on July 1, 1988.

SECTION 105. South Carolina Health Plan.

1. With the advice of the health planning committee, the Department shall prepare a South Carolina Health Plan for use in the administration of the Certificate of Need Program. The plan, at a minimum, must include:

- a. an inventory of existing health care facilities, beds, specified health services, and equipment;
- b. projections of need for additional health care facilities, beds, health services, and equipment;
- c. standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of service, and proper planning of health care facilities; and
- d. a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment, may outweigh the adverse affects caused by the duplication of any existing facility, service, or equipment.

2. The South Carolina Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care cost and accessibility. Nothing in this provision shall be construed as requiring the Department to approve any project which is inconsistent with the South Carolina Health Plan.

3. Upon approval by the health planning committee, the South Carolina Health Plan must be submitted at least once every two (2) years to the Board for final revision and adoption. Once adopted by the Board, the Plan may later be revised through the same planning and approval process, public review and comment, including four (4) regional public hearings before adoption or revision of the Plan. Prior to revising the plan, the Department will publish a notice in the State Register, announcing a period for public comments and scheduling public hearings to receive public comments.

CHAPTER 2 APPLICATION PROCEDURES

SECTION 201. Public Notification.

1. Within twenty (20) calendar days prior to submission of an application, the applicant shall publish notification that an application is to be submitted to the Department in the legal section of a daily newspaper serving the area where the project is to be located for three (3) consecutive days. The notification must contain at least the following information:

- a. that a Certificate of Need is being applied for;
- b. a description of the scope and nature of the project; and
- c. the estimated project capital cost.

2. No application may be accepted for filing by the Department unless accompanied by documentation from the newspaper that publication has been made for three (3) consecutive days within the prior twenty (20) day period.

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CHAPTER 3 DISPOSITION OF APPLICATION

SECTION 301. Submission of Application.

1. The application shall be submitted utilizing the web-based application available on the Department's website or by such other means the Department may provide.

2. A non-refundable filing fee of five hundred dollars (\$500) shall be received by the Bureau of Operations Support, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC, 29201, within twenty (20) calendar days of the public notification pursuant to Section 201 and the Certificate of Need application pursuant to Section 301.1.

3. Applicants are encouraged to involve the Department in the development of proposed projects prior to the submission of an application.

SECTION 302. Additional Information.

1. Within fifteen (15) calendar days of acceptance of the application, the Department may request additional information as may be necessary to complete the application. Should additional information be required for an application to be considered complete, the applicant will have fifteen (15) calendar days from the date of the request to submit the requested information. If the applicant does not submit the requested information within fifteen (15) calendar days, the application will be deemed withdrawn.

2. If any deadline provided for in this section falls on a weekend or State holiday, the deadline will be extended until the next calendar day that is not a weekend or State holiday.

SECTION 303. Payment of Filing and Application Fees.

1. When the application is determined to be complete, the Department shall invoice the applicant, by certified mail, for the Certificate of Need application fee. The applicant shall have fifteen (15) calendar days from the date of receipt of the invoice to pay the fee by valid check or credit card made payable to the S.C. Department of Health and Environmental Control. Should the application fee not be received from the applicant within fifteen (15) calendar days from receipt of the Department's invoice, the application will be considered withdrawn.

2. The application fee is one half of one percent (.5%, .005) of the total project cost (as defined in Section 102), which is payable when the application is deemed complete. The application fee shall not exceed seven thousand dollars (\$7,000).

3. If any deadline provided for in this section falls on a weekend or State holiday, the deadline will be extended until the next calendar day that is not a weekend or State holiday.

SECTION 304. Relative Importance Criteria.

1. Upon determination by the Department that an application is complete, the Department shall notify the applicant, by certified mail, of the relative importance of the project review criteria to be used in reviewing the application. The applicant will have thirty (30) calendar days from the date of receipt of this notice to submit any additional information. If, subsequent to this notice, the Department determines that the relative importance of the review criteria has changed, the Department must again notify the applicant by certified mail. The applicant will have thirty (30) calendar days from receipt of the revised notice to submit any additional information.

2. The staff may reorder the relative importance of the project review criteria no more than one (1) time. The staff's reordering of the relative importance of the project review criteria does not extend the review period.

3. When an application has been appealed, the Department may not change the weight of the importance of the project review criteria.

SECTION 305. Review Time Frames.

1. Upon determination by the Department that the application is complete, the Department shall publish in the State Register a notice that the review cycle for the project has begun. Any affected person who has notified the Department in writing that they desire to be notified of the beginning of the review period will be sent a copy of the notification.

2. The Department will make a decision on the complete application no earlier than thirty (30) calendar days but no later than ninety (90) calendar days of the date of publication in the State Register unless a public hearing is held. If a public hearing is held pursuant to Section 306, the Department will render its decision no later than one hundred twenty (120) calendar days from the date the affected persons are notified that the application is complete. Notice of a Department decision must be sent by certified mail, return receipt requested, to the applicant and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail.

SECTION 306. Public Hearing.

A public hearing must be requested in writing by an affected person as defined in this regulation within thirty (30) calendar days of the notification of the beginning of a review. Where such a hearing is requested, prior notice of the hearing will be provided to affected persons. The written notification of the hearing shall include the proposed schedule for the review, time, date, and place of such hearing. The public hearing shall provide an opportunity for any person to present information relevant to the application.

SECTION 307. Department Review.

1. The Department may not issue a Certificate of Need unless an application is in compliance with the South Carolina Health Plan as described in this regulation, project review criteria, and other provisions in this regulation which must be identified by the Department. The Department may refuse to issue a Certificate of Need even if an application is in compliance with the South Carolina Health Plan but is inconsistent with project review criteria or other provisions in this regulation. The Department must identify any provisions in this regulation that are used as a basis for denying an application that is in compliance with the South Carolina Health Plan.

2. In the case of competing applications, the Department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of the Certificate of Need program, South Carolina Health Plan, project review criteria, and any provisions in this regulation.

SECTION 308. Department Decision.

On the basis of staff review of the record established by the Department, including but not limited to, the application, comments from affected persons and other persons concerning the application, data, studies, literature and other information available to the Department, the staff of the Department shall make a proposed decision to grant or deny the Certificate of Need.

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SECTION 309. Certificate of Need Issuance Fee.

Approved projects with a total project cost greater than one million four hundred thousand dollars (\$1,400,000) will require payment of a Certificate of Need issuance fee of seven thousand five hundred dollars (\$7,500). The Department must receive payment from the applicant within fifteen (15) calendar days from receipt of the certificate for the Certificate of Need to remain valid.

SECTION 310. Project Changes During Review Period.

If an applicant amends the application during the review process, the Department will determine whether or not the amendment is substantial and constitutes a new application. If the change is not substantial and results in an increase in total project cost, the fees will be adjusted accordingly.

SECTION 311. Validity of Certificate of Need Issued.

The Certificate of Need, if issued, is valid only for the project described in the application including location, beds, and services to be offered, physical plant, capital or operating costs, or other factors as set forth in the application, except as may be modified in accordance with this regulation. Implementation of the project or operation of the facility or medical equipment that is not in accordance with the Certificate of Need application or conditions subsequently agreed to by the applicant and the Department may be considered a violation of this regulation.

SECTION 312. Prohibited Contact.

1. After a Certificate of Need application has been filed with the Department, state and federal elected officials are prohibited from communicating with the Department with regard to the Certificate of Need application at any time. This prohibition does not include written communication of support or opposition to an application. Such written communication must be included in the administrative record.

2. From the date of publication of notice in the local newspaper that an application is being filed and until the date final review is requested under Section 401 of this regulation:

a. members of the Board and persons appointed by the Board to hold a final review conference on staff decisions may not communicate directly or indirectly with any person in connection with the application; and

b. no person shall communicate, or cause another to communicate, as to the merits of the application with members of the Board and persons appointed by the Board to hold a final review conference on staff decisions.

CHAPTER 4 APPEALS

SECTION 401. Appeal of Decision.

1. A Department decision involving the issuance, denial, or revocation of a Certificate of Need may be appealed by an affected person pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, Chapter 23; and Title 44, Chapter 7.

2. A person may not file a request for final review in opposition to the staff decision on a Certificate of Need unless the person provided written notice to the Department during the staff review that they are an affected person and specifically states their grounds for opposition to the application under review.

CHAPTER 5
GENERAL PROVISIONS

SECTION 501. Periodic Reports.

For the purpose of health planning, health care facilities and others who provide services that require a Certificate of Need or who have been exempted, shall on an annual basis submit information requested on the applicable Joint Annual Report.

SECTION 502. Review Under Applicable Plan.

All decisions on Certificate of Need applications shall be made based on the currently approved South Carolina Health Plan in effect at the time such application is accepted. Should a new plan be adopted during any phase of the review or appeals process, the applicant shall have the option of withdrawing the application and resubmitting under the newly adopted plan or continuing the review or appeal process under the plan in use when the application was submitted. In cases where applications are withdrawn and resubmitted under the newly adopted South Carolina Health Plan within forty-five (45) calendar days of the date of withdrawal, no additional filing fee shall be required.

CHAPTER 6
VOIDANCE AND EXTENSION OF CERTIFICATES OF NEED

SECTION 601. Voidance and Extension Procedures.

1. The Certificate of Need shall become void twelve months (one year) from the date of issuance unless implemented as described in this subsection or a timely extension request is received pursuant to Section 602. The Department may void a Certificate of Need if requested by the applicant. Implementation may be evidenced by, but not limited to, a properly negotiated valid construction contract or appropriate purchase order for service projects.

2. A Certificate of Need must be issued with a timetable submitted by the applicant, and approved by the Department, to be followed for completion of the project. The holder of the Certificate of Need must submit quarterly progress reports documenting compliance with the aforementioned timetable. Failure to meet the timetable will result in the revocation of the Certificate of Need by the Department unless the Department determines that extenuating circumstances beyond the control of the holder of the Certificate of Need are the cause of the delay. If the applicant has not met the approved timetable, documented evidence that extenuating circumstances beyond the control of the holder of the Certificate of Need should be provided to the Department. This information can also be included in a request for an extension as provided in Section 602.

3. The Department may grant up to two (2) extensions of up to nine (9) months each. In order to obtain an extension, the applicant must have demonstrated substantial progress and must either be complying with the approved timetable or have submitted documentation satisfactory to the Department that extenuating circumstances beyond the control of the applicant have prevented compliance with the timetable. After the nine (9) month extension period, the Certificate of Need will expire and become void.

4. However, the Board may grant further extensions of the Certificate of Need of up to nine (9) months each if it determines that substantial progress has been made. A request to the Board must be made at least three (3) months prior to the expiration of the Certificate of Need and must contain justification for such extension.

SECTION 602. Extension Request.

1. A Certificate of Need extension shall be requested in writing by the applicant at least thirty (30) calendar days before the expiration date of the Certificate of Need.

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2. The written request for an extension shall include at least the following:

- a. A detailed description of any changes in the configuration, costs, services, or scope of the project.
- b. A detailed description and documentation of any progress on the project including preparation of construction drawings, the securing of necessary funds and building permits, and commencement of any construction.
- c. An estimated timetable for commencement and completion of all remaining components of the project.
- d. Documentation of compliance with the approved timetable or documented evidence that extenuating circumstance beyond the control of the applicant if the timetable was not met.

SECTION 603. Criteria for Extension.

The following criteria shall be used to determine whether substantial progress has been made by the applicant:

1. Site procurement: The applicant should have made definitive progress toward permanent acquisition of the intended site. Such progress may include purchase of property previously under option or consummation of long-term lease agreements.
2. Architectural Progress: The facility architect should have been employed and definitive progress should be made toward development of final drawings.
3. Financial Status: The applicant should document definitive progress toward finalizing any necessary loans or lease-purchase arrangements.
4. The applicant should provide reasonable assurance that the project will be under construction or implemented within the requested extension time frame.

SECTION 604. Nontransferability of Certificate of Need.

1. A Certificate of Need is nontransferable. A Certificate of Need or rights there under may not be sold, assigned, leased, transferred, mortgaged, pledged, or hypothecated, and any actual transfer or attempt to make a transfer of this sort will result in the immediate voidance of the Certificate of Need. Any of the aforementioned transactions involving an entity directly or indirectly holding a Certificate of Need before fulfillment of the Certificate of Need will result in the transfer and the subsequent voidance of the Certificate of Need.
2. The sale or transfer of the controlling interest or majority ownership in a corporation, partnership, or other entity holding, either directly or indirectly, a Certificate of Need, will result in the transfer and voidance of a Certificate of Need.
3. Fulfillment of the Certificate of Need occurs upon the submission of an adequate final completion report pursuant to Section 607.3.

SECTION 605. Project Changes After Receipt of Certificate of Need.

If an applicant amends or alters their project after receipt of a Certificate of Need, the Department will decide whether or not the amendment is substantial and thereby constitutes a new project.

SECTION 606. Total Project Cost.

In issuing a Certificate of Need, the Department shall specify the approved total project cost. A project is only approved for the amount specified in the Certificate of Need. The Department will review cost overruns on an individual basis.

SECTION 607. Periodic Reporting of Certificate of Need Implementation.

1. The applicant is required to submit a quarterly progress report that corresponds with the timetable included in the Certificate of Need application beginning ninety (90) calendar days after receipt of the Certificate of Need. Failure to meet the timetable will result in the revocation of the Certificate of Need by the Department unless a determination is made by the Department that circumstances beyond the control of the holder of the Certificate of Need are the cause of the delay.

2. The applicant shall report on, if applicable: (1) costs incurred on the project; (2) construction activity; (3) program or service activity; and (4) any deviations from the submitted application with supporting documentation.

3. After the project has been fully implemented, the applicant shall provide the Department with a final completion report that contains, at a minimum:

- a. An audited cost report that shows all expenditures on the approved project;
- b. A list of average charges and costs for the services approved in the application and documented by affidavit, certification, or other proof;
- c. A registered architect's or engineer's signed statement of final construction costs;
- d. An equipment listing and inventory for the project;
- e. A program and/or service narrative describing the final project configuration;
- f. An explanation of any deviation from the approved application with justification, or a signed statement from the applicant that the project was implemented as outlined in the application; and
- g. A listing of non-capital costs.

4. Records relating to the project shall be maintained by the applicant for seven (7) years following the completion of the project and these records shall be made available to the Department's auditors for inspection as needed.

5. The Department may audit any project for consistency with the information provided in the Certificate of Need application. Undertaking a project that is not in accordance with the approved application or conditions or amendments subsequently agreed to by the applicant and the Department may be considered a violation of this article.

CHAPTER 7
PENALTIES FOR NON-COMPLIANCE

SECTION 701. Penalties.

Undertaking any activity requiring Certificate of Need review, pursuant to Section 102 of this regulation, without prior approval of the Department or failing to comply with any of the above stated regulations shall be

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grounds for the denial, suspension, or revocation of the Certificate of Need, or other penalties, under the provisions of the Health Facility Licensure Act, S.C. Code Ann. Sections 44-7-110 *et seq.*, as amended.

CHAPTER 8 PROJECT REVIEW CRITERIA

SECTION 801. Applicability and Weighting.

1. The criteria listed in Section 802 are to be used in reviewing all projects under the Certification of Need program. These criteria have been grouped under the following general categories:

Need for the Proposed Project (Section 802.1 through 802.4)

Economic Consideration (Section 802.5 through 802.9)

Health System Resources (Section 802.10 through 802.14)

Site Suitability (Section 802.15)

Special Consideration (Section 802.16 through 802.18)

2. The Department shall notify the applicant of the relative importance of the project review criteria to be used in reviewing the application. The relative importance assigned to each specific criterion is established by the Department depending upon the importance of the criterion applied to the specific project. The relative importance must be consistent for competing projects.

3. A project does not have to satisfy every criterion in order to be approved, but no project may be approved unless it is consistent with the South Carolina Health Plan. A project may be denied if the Department determines that the project does not sufficiently meet one (1) or more of the criteria.

SECTION 802. Criteria for Project Review.

1. Need:

The proposal shall not be approved unless it is in compliance with the South Carolina Health Plan.

2. Community Need Documentation:

a. The target population should be clearly identified as to the size, location, distribution, and socioeconomic status (if applicable).

b. Projections of anticipated population changes should be reasonable and based upon accepted demographic or statistical methodologies, with assumptions and methodologies clearly presented in the application. The applicant must use population statistics consistent with those generated by the South Carolina Revenue and Fiscal Affairs Office.

c. The proposed project should provide services that meet an identified (documented) need of the target population. The assumptions and methods used to determine the level of need should be specified in the application and based on a reasonable approach as judged by the reviewing body. Any deviation from the population projection used in the South Carolina Health Plan should be explained.

d. In the case of a reduction, relocation, or elimination of a facility or service, the applicant should address the need that the population presently has for the service, the extent to which that need will be met by the

proposed relocation or by alternative arrangements, and the effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, the elderly, handicapped persons, and other underserved groups, to obtain needed health care.

e. Current and/or projected utilization should be sufficient to justify the expansion or implementation of the proposed service.

3. Distribution (Accessibility):

a. Duplication and modernization of services must be justified. Unnecessary duplication of services and unnecessary modernization of services will not be approved.

b. The proposed service should be located so that it may serve medically underserved areas or an underserved population segment.

c. The proposed facility should not restrict admissions. If any restrictions are applied, their nature should be clearly explained.

d. The applicant must document the means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

e. The applicant should address the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, the elderly, handicapped persons, and other medically underserved groups, are likely to have access to those services being proposed.

f. The facility providing the proposed services should establish provisions to ensure that individuals in need of treatment as determined by a physician have access to the appropriate service, regardless of ability to pay.

g. Potential negative impact of the proposed project upon the ability and/or resources of existing providers to serve medically underserved groups must be considered.

h. The applicant should document the balance between competition in the marketplace and how the proposed project impacts patient choice in the service area.

4. Acceptability:

a. The proposal and applicant should have the support of affected persons (including local providers and the target population). The lack of opposition should not be considered support for the purposes of these criteria.

b. Where documented opposition exists to a proposal, such opposition will be considered along with the application.

c. Possible transfer agreements should be confirmed and an intent to negotiate these arrangements should be documented by all parties.

5. Record of the Applicant (Owner and/or Administrator):

a. The applicant's record should be one of successful operation with adequate management experience.

b. The applicant should have a demonstrated ability to obtain necessary capital financing.

c. If the applicant has no prior experience, sources of assistance should be specified (i.e., technical assistance from specific individuals or organizations).

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d. The applicant's record or their representative's record of cooperation and compliance with State and Federal regulatory programs will be considered.

6. Ability to Complete the Project:

a. The applicant should have demonstrated that the project can be initiated and completed within the proposed time frame specified in the application.

b. The financial schedules and time frames contained in the application should be consistent with those usually experienced in the development of similar facilities or services.

7. Financial Feasibility:

a. The applicant must have projected both the immediate and long-term financial feasibility of the proposal. Such projection should be reasonable and based upon accepted accounting procedures.

b. All financial entries and assumptions contained in the application must be provided by an accountant who attests to the reliability of this financial information.

c. Projected utilization, revenues, expenses, and net income should be comparable to those experienced by providers of similar services, and the applicant must demonstrate that the project will attain a positive, net income trend within the first three (3) years of operation.

d. The applicant must document the availability of resources to cover capital and start-up costs, the ability to service any debt undertaken, and the ability to obtain capital financing, if necessary.

e. The impact of the project upon the applicant's cost to provide services and the applicant's net patient charges must be reasonable.

8. Efficiency:

The proposed project should improve efficiency by avoiding duplication of services, promoting shared services, and fostering economies of scale or size.

9. Alternative Methods:

a. The applicant should have considered any available or more effective alternatives which exist to the proposed service such as the use of less costly alternatives, outpatient services, shared services, or extended hours of service.

b. For new construction projects, modernization of existing facilities should be considered as an alternative, and the rejection of this alternative by the applicant should be justified.

10. Staff Resources:

a. The applicant should have a reasonable plan for the provision of all required staff (physicians, nursing, allied health and support staff, etc.).

b. The applicant should demonstrate that sufficient physicians are available to ensure proper implementation (e.g., utilization and/or supervision) of the project.

c. If the applicant presently owns existing facilities or services, they should demonstrate a satisfactory staffing history.

d. Alternative uses of resources for the provision of other health services should be identified and considered.

11. Support Services and Equipment:

a. Support services and equipment necessary to implement and sustain the proposed service should be identified, accessible, and of sufficient capacity.

b. Where possible, projects should utilize equipment already available and accessible to the population to be served.

12. Distribution:

The existing distribution of the health service(s) should be identified and the effect of the proposed project upon that distribution should be carefully considered to functionally balance the distribution to the target population.

13. Adverse Effects on Other Facilities:

a. The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services.

b. The staffing of the proposed service should be provided without unnecessarily depleting the staff of existing facilities or services or causing an excessive rise in staffing costs due to increased competition.

14. Adverse Effects on Training Programs:

a. The proposed delivery of health services should not adversely affect the ability of local health professional training programs to meet their clinical needs.

b. If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes should be clearly delineated in the proposal.

15. Site and Building Suitability:

a. The proposed site must comply with local zoning regulations. Documentation should be provided from the appropriate zoning authorities that the proposed site is or can be zoned for the intended use.

b. The proposed facility should not be located on a site where environmental conditions would either create a health hazard or aggravate an existing health condition in individuals served by the facility.

c. Documentation should be provided that all of the property intended for use is available to the applicant. Consideration may also be given to the suitability of the proposed site for any expansion of services included in the applicant's long-range plans.

16. Medically Underserved Groups:

a. The applicant should address the contribution of the proposed service in meeting the health needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (e.g., low income persons, racial and ethnic minorities, women, the elderly, and handicapped persons), particularly those needs identified in the applicable South Carolina Health Plan as deserving of priority.

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b. The extent to which medically underserved populations currently use the applicant's services should be considered in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved.

c. Consideration of the documented performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, indigent care plan, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant) should be given.

d. Consideration should be given to the extent to which Medicare, Medicaid, and medically indigent patients are served by the applicant.

17. Elimination of Safety Hazards:

The Department shall issue a Certificate of Need for a proposed capital expenditure if it is required to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations; or to comply with State Licensure standards, or to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State Plan for medical assistance approved under Title XIX of that Act, provided the Department has determined that the facility or service for which the capital expenditure is proposed is needed and the obligation of the capital expenditure is consistent with the South Carolina Health Plan. Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with licensure, certification, or accreditation standards shall be reviewed against each of the applicable criteria for project review.

18. Quality of Care:

Applicants should describe metrics or benchmarks of quantitative quality metrics, if any, for the proposed facility, service, or equipment requiring a Certificate of Need. If the applicant is an existing provider, it should provide data on such metrics or benchmarks. If the applicant is a proposed provider, it should provide a plan on how it will meet such metrics or benchmarks.

Fiscal Impact Statement:

The Department does not anticipate the implementation of this regulation will require any additional resources. There is no anticipated additional cost to the Department or state due to any inherent requirements of this regulation. There are no external costs anticipated.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: 61-15, Certification of Need for Health Facilities and Services.

Purpose: The Department amends R.61-15, Certification of Need for Health Facilities and Services, for consistency with statutory requirements, to establish an electronic application process, to revise the application format and additional information required for the application process, and update exemption and non-applicability determination processes. The amendments also include adding, removing, and modifying definitions contained within the regulation. The Department updated language and processes related to public hearings on Certificate of Need applications, the application and review process and related notifications, voidance and extension procedures, and periodic and final reporting requirements regarding issued Certificates of Need. Additionally, the amendments revise the project review criteria and the monetary thresholds that trigger

a Certificate of Need review. The amendments also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

Legal Authority: 1976 Code Sections 44-7-110 through 44-7-340.

Plan for Implementation: The amendments will take legal effect upon General Assembly approval and upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendments. Additionally, a copy of the regulation will be posted on the Department's website, accessible at www.scdhec.gov/regulations-table. Printed copies may also be requested, for a fee, from the Department's Freedom of Information Office.

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

R.61-15 has not been substantively revised since 2003 and needs to be updated to reflect current technology and industry standards. In February 2022, the Legislative Audit Council (LAC) issued *A Review of the S.C. Department of Health and Environmental Control Certificate of Need Program*, wherein the LAC provided a list of recommendations for the Certificate of Need program. The Department's Agency Response to the LAC report indicated initiating the promulgation process in 2022 to address the recommendations through regulatory revisions.

The LAC recommendations that the Department is addressing in this revision include standardizing the information required for Certificate of Need applicants to ensure consistency in its evaluation process, requiring Certificate of Need applicants to provide information on net patient charges when project impact on patient charges is a factor in the evaluation process, requiring Certificate of Need applicants to report on non-capital expenses related to a project, and increasing the thresholds for equipment and capital expenditures for the Certificate of Need program and provide the adjustment of those thresholds pursuant to the Medical Care Index component of the Consumer Price Index.

The Department's amendments are in line with the abovementioned LAC recommendations, and additionally include moving to a more streamlined and modernized application format and process, increasing the timeframes for the exemption and non-applicability determinations from 12 months to 18 months, and streamlining and consolidating the project review criteria from 33 criteria to 18 criteria. Overall, the Department's amendments aim to increase flexibility and minimize the undue burden to the regulated community.

DETERMINATION OF COSTS AND BENEFITS:

The Department anticipates the amendments will decrease costs and increase benefits to the regulated community by improving the application process and increasing the monetary thresholds that trigger Certificate of Need review. The Department anticipates the amendments will decrease the costs necessary to maintain the current Certificate of Need application and review processes. The Department anticipates the benefits will include increased time and resources to process and review Certificate of Need applications. The amendments remove the requirement that Certificate of Need applications be submitted as paper applications and allow the Department to move towards implementation of an electronic application process.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties associated with the estimations beyond those normally inherent in estimating future costs and benefits.

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EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The amendments to R.61-15 seek to improve the Certificate of Need application and review processes involved in determining whether there is need for, among other items, construction or other establishment of a new health care facility. This supports the Department's mission to improve the quality of life for all South Carolinians by protecting and promoting the health of the public and the environment.

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

It may be detrimental to the regulated community and public health if the amendments to R.61-15 are not implemented because the Certificate of Need application process will continue to require the submission of paper copies and limit the Department's ability to modernize and improve efficiencies in the process required prior to undertaking, among other items, the construction or other establishment of a new health care facility. This is detrimental to the accessibility of the Certificate of Need application process as well as to the new health care facility. There is no anticipated detrimental effect on the environment if the amendments are not implemented.

Statement of Rationale:

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

R.61-15 has not been substantively revised since 2003 and needs to be updated to reflect current technology and industry standards. These amendments aim to decrease the undue burden on the regulated community and include allowing for a modernized Certificate of Need application format and process, increasing the timeframes for determinations (exemption and non-applicability) from 12 months to 18 months, and streamlining, modernizing, and consolidating the project review criteria from 33 criteria to 18 criteria, which includes the addition of a quality of care criterion.

The Department is also addressing the Legislative Audit Council (LAC) recommendations published in their February 2022 report, including standardizing the information required for Certificate of Need applicants to ensure consistency in its evaluation process, requiring Certificate of Need applicants to provide information on net patient charges when project impact on patient charges is a factor in the evaluation process, requiring Certificate of Need applicants to report on non-capital expenses related to a project, and increasing the thresholds for equipment and capital expenditures for the Certificate of Need program and provide the adjustment of those thresholds pursuant to the Medical Care Index component of the Consumer Price Index.

The Department anticipates decreased costs and increased benefits to the regulated community by improving the application process and increasing the monetary thresholds that trigger Certificate of Need review. Without the amendments, the Department will be obligated to continue enforcing the regulatory requirement to receive two copies of a Certificate of Need application on 8 ½ x 11-inch paper, one side only, and 3-hole punched on the left side.