

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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THE LEGISLATIVE COUNCIL
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.

2011 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	1/14	2/11	3/11	4/8	5/13	6/10	7/8	8/12	9/9	10/14	11/11	12/9
Publishing Date	1/28	2/25	3/25	4/22	5/27	6/24	7/22	8/26	9/23	10/28	11/25	12/23

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.

SUBSCRIPTIONS

Subscriptions to the *South Carolina State Register* are available electronically through the South Carolina Legislature Online website at www.scstatehouse.gov via an access code, or in a printed format. Subscriptions run concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for **either** format is \$100.00. Payment must be made by check payable to the Legislative Council. To subscribe, complete the form below and mail with payment. Access codes for electronic subscriptions will be e-mailed to the address submitted on this form.

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 The history, status, and full text of these regulations are available on the
 South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4126			South Carolina Pesticide Control	5/11/11	Clemson University-State Crop Pest Comm.
4141			Seasons, Limits, Methods of Take and Special Use Restrictions on WMA's; Turkey Hunting Rules and Seasons	5/11/11	Department of Natural Resources
4135			Rehabilitation of Designated Historic Buildings	5/11/11	Department of Archives and History
4130			Air Pollution Control Regulations and Standards: Standards of Performance for Asbestos Projects	5/11/11	Department of Health and Envir Control
4132			Environmental Protection Fees (Radioactive Material Licenses Fees)	5/11/11	Department of Health and Envir Control
4153			SC Safe Home Program Wind Inspectors and Contractors	5/11/11	Department of Insurance
4139			Environmental Protection Fees (Drinking Water Fees)	5/12/11	Department of Health and Envir Control
4163			Board of Landscape Architectural Examiners	5/21/11	Board of Landscape Architectural Exam
4138			Regulation Governing Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds or Other Security Mechanisms	5/24/11	Public Service Commission
4156			Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	5/24/11	State Board of Education
4158			Requirements for Certification at the Advanced Level	5/24/11	State Board of Education
4145			South Carolina HOPE Scholarship	5/24/11	Commission on Higher Education
4146			LIFE Scholarship & LIFE Scholarship Enhancement	5/24/11	Commission on Higher Education
4147			Lottery Tuition Assistance Program for Two-Year Public and Independent Institutions	5/24/11	Commission on Higher Education
4148			South Carolina Need-based Grants Program	5/24/11	Commission on Higher Education
4149			Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement	5/24/11	Commission on Higher Education
4137			Customer Deposits and Deposit Retention	5/24/11	Public Service Commission
4159			Sentencing Reform	5/26/11	Dept. of Probation, Parole and Pardon Ser
4169			Unemployment Insurance Reform (Updates to Article 1)	6/01/11	Department of Employment and Workforce
4170			Unemployment Insurance Reform (Updates to Article 2)	6/01/11	Department of Employment and Workforce
4171			Unemployment Insurance Reform (Updates to Article 3)	6/01/11	Department of Employment and Workforce
4168			Perpetual Care Cemetery Board	6/01/11	SC Perpetual Care Cemetery Board
4164			Child Labor	6/02/11	Division of Labor
4161			Water Classifications and Standards	1/24/12	Department of Health and Envir Control
4162			Applications for Certification; Renewal of License and Permit, Continuing Education; and Operator-in-Training Licenses	1/26/12	Environmental Certification Board
4157			Requirements for Additional Areas of Certification	1/30/12	State Board of Education
Permanently Withdrawn					
4154			Food and Cosmetics		Department of Agriculture

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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.htm>

DOC. No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
4126	South Carolina Pesticide Control	Agriculture and Natural Resources	Agriculture and Natural Resources
4141	Seasons, Limits, Methods of Take and Special Use Restrictions on WMA's; Turkey Hunting Rules and Seasons	Agriculture and Natural Resources	Fish, Game and Forestry
4135	Rehabilitation of Designated Historic Buildings	Medical, Military, Pub & Mun Affairs	Judiciary
4130	Air Pollution Control Regulations and Standards; Standards of Performance for Asbestos Projects	Agriculture and Natural Resources	Agriculture and Natural Resources
4132	Environmental Protection Fees (Radioactive Material Licenses Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
4153	SC Safe Home Program Wind Inspectors and Contractors	Labor, Commerce and Industry	Banking and Insurance
4139	Environmental Protection Fees (Drinking Water Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
4163	Board of Landscape Architectural Examiners	Labor, Commerce and Industry	Labor, Commerce and Industry
4138	Regulation Governing Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds or Other Security Mechanisms	Labor, Commerce and Industry	Judiciary
4156	Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	Education and Public Works	Education
4158	Requirements for Certification at the Advanced Level	Education and Public Works	Education
4145	South Carolina HOPE Scholarship	Education and Public Works	Education
4146	LIFE Scholarship & LIFE Scholarship Enhancement	Education and Public Works	Education
4147	Lottery Tuition Assistance Program for Two-Year Public and Independent Institutions	Education and Public Works	Education
4148	South Carolina Need-based Grants Program	Education and Public Works	Education
4149	Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement	Education and Public Works	Education
4137	Customer Deposits and Deposit Retention	Labor, Commerce and Industry	Judiciary
4159	Sentencing Reform	Judiciary	Corrections and Penology
4169	Unemployment Insurance Reform (Updates to Article 1)	Labor, Commerce and Industry	Labor, Commerce and Industry
4170	Unemployment Insurance Reform (Updates to Article 2)	Labor, Commerce and Industry	Labor, Commerce and Industry
4171	Unemployment Insurance Reform (Updates to Article 3)	Labor, Commerce and Industry	Labor, Commerce and Industry
4168	Perpetual Care Cemetery Board	Labor, Commerce and Industry	Labor, Commerce and Industry
4164	Child Labor	Labor, Commerce and Industry	Labor, Commerce and Industry
4161	Water Classifications and Standards	Agriculture and Natural Resources	Agriculture and Natural Resources
4162	Applications for Certification; Renewal of License and Permit, Continuing Education; and Operator-in-Training Licenses	Agriculture and Natural Resources	Labor, Commerce and Industry
4157	Requirements for Additional Areas of Certification	Education and Public Works	Education
Permanently Withdrawn			
4154	Food and Cosmetics	Medical, Military, Pub & Mun Affairs	Agriculture and Natural Resources

Executive Order No. 2011-08

WHEREAS, the Heritage Corridor Plan resulted from a grant awarded to the South Carolina Department of Parks, Recreation & Tourism (“SCPRT”) from the South Carolina Department of Transportation in 1993; and

WHEREAS, by Executive Order 94-15 the Governor of the State of South Carolina charged SCPRT with creating a heritage program in South Carolina, recognizing there was a bill pending before the Congress of the United States to designate a corridor in the western part of the State of South Carolina as a National Heritage Corridor, and

WHEREAS, on November 12, 1996, Public Law 104-333, Division II, Title VI, November 12, 1996, 110 Statutes 4260 (“Public Law”) officially established the South Carolina National Heritage Corridor, providing federal funding until 2012 for the South Carolina National Heritage Trust Program (“Program”), and directing selection of the management entity for the Program by the Governor of the State of South Carolina; and

WHEREAS, by Executive Order 97-18 issued May 16, 1997, the Governor of the State of South Carolina, recognizing the significant cost of fully implementing the Program that had been created by SCPRT and federally-funded by Congress, directed SCPRT to create an independent, tax-exempt public benefit corporation to lessen the financial burden on state government with respect to the management and implementation of the Program by assisting SCPRT with the operations and other requirements of the Program; and

WHEREAS, SCPRT as incorporator and registered agent filed articles of incorporation on May 19, 1997, seeking 501(c)(3) status for SCNHC, Inc., and received said status in January 1998; and

WHEREAS, in May 1998, the United States Department of Interior, National Park Service and the State of South Carolina entered into a cooperative agreement that recognized and established SCPRT as the recipient of the federal funds, responsible for the Program as the Program’s fiscal and administrative agent; and

WHEREAS, SCNHC, Inc., was established in order to raise non-public funds to be used for the management and implementation of the Program with the goal of creating a self-sustaining Program that would ultimately not require public funding to maintain itself; and

WHEREAS, the Program has continued to rely heavily on SCPRT for substantial funding, administrative support, including but not limited to, budget and accounting services, human resource management, and procurement and marketing support; and

WHEREAS, by Executive Order 2008-15 issued December 1, 2008, the Governor of the State of South Carolina recognized and designated SCPRT as the management entity for the Program and conferred full authority on SCPRT to direct the Program as it determines necessary; and

WHEREAS, in February, 2011 the South Carolina Legislative Audit Council after a thorough review of the Program recommended, as an alternative to the present structure of the Program, that SCPRT be given the control and management of all operations and aspects of the Program, including evaluating and awarding community grant applications throughout the Corridor; and

WHEREAS, SCPRT is the state agency with responsibility for tourism marketing, administration and development; and

4 EXECUTIVE ORDERS

WHEREAS, SCPRT will recognize the Program as a cohesive 17-county heritage corridor as it is recognized by the Public Law providing federal funding for the Program and will work to promote rural tourism development throughout the heritage corridor through a comprehensive marketing and grants program administered by SCPRT; and

WHEREAS, SCPRT has experience in successfully administering federal grant funds and will administer the federal grant funds for the Program based on established criteria in accordance with the provisions of a cooperative agreement between SCPRT and the United States Department of Interior and in compliance with all applicable federal and state laws, rules and regulations relevant to the evaluation, awarding, and accountability of grant applications for federal funds.

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, I do hereby recognize SCPRT as the management entity of the Program, recipient of the federal grant funds, and the agent for all fiscal and administrative responsibilities connected thereto, with full authority to organize, implement and direct the Program as it determines necessary and appropriate. I also acknowledge and recognize SCPRT as the entity responsible for evaluating, awarding, and maintaining accountability of grant applications for the Program.

FURTHER, I hereby acknowledge and recognize the role of SCNHC, Inc. as an independent, autonomous public benefit corporation organized and existing for the purpose of supporting heritage development in the Corridor.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 9th DAY OF MARCH, 2011.**

NIKKI R. HALEY
Governor

Executive Order No. 2011-09

WHEREAS, the Patient Protection and Affordable Care Act was enacted by the Congress of the United States and signed into law by the President of the United States on March 23, 2010 and the Health Care and Education Reconciliation Act (hereinafter collectively referred to as the "Affordable Care Act") was enacted by the Congress of the United States and signed into law by the President of the United States on March 30, 2010 to address some of the issues associated with the affordability and availability of health insurance; and

WHEREAS, the Affordable Care Act requires the establishment of health insurance exchanges by 2014; and

WHEREAS, Section 1311 of the Affordable Care Act provides grant assistance to the States for the planning and establishment of American Health Benefit Exchanges and requires the Secretary of the United States Department of Health and Human Services to make initial awards not later than one year after enactment; and

WHEREAS, the Secretary announced the first round of grants to states, known as Exchange Planning Grants, on July 29, 2010; and

WHEREAS, the South Carolina Department of Insurance, having been designated as the lead agency for the Exchange Planning Grant, applied for and received a grant on September 30, 2010 in the amount of \$1 million to determine whether the establishment of a health insurance exchange would be feasible for the State of South Carolina; and

WHEREAS, the Department of Insurance grant calls for the establishment of the South Carolina Health Exchange Planning Committee, a planning committee made up of key stakeholders to assist with the formulation of policy recommendations regarding whether it is feasible for South Carolina to establish a health insurance exchange and, if so, propose a plan for the successful implementation and ongoing sustainability of a state-based health insurance exchange; and

WHEREAS, the purpose of this Executive Order is to establish the aforementioned planning committee and set forth the general guidelines for its operation.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of the State of South Carolina, I hereby establish the South Carolina Health Exchange Planning Committee (Committee) for which the composition, duties and responsibilities are set forth below. The Committee shall be an advisory group whose mission is to assist with research as determined necessary by the Director of Insurance and to provide recommendations on the health insurance exchange planning process as described in the Exchange Planning Grant application.

A. The Committee shall:

1. Convene healthcare delivery systems stakeholders and build trust and consensus among stakeholders;
2. Conduct a thorough review and analysis of current and new data on the operation of health insurance exchanges;
3. Complete an in-depth study and review of alternative approaches to establishing a health insurance exchange; and
4. Develop and submit a report to the Governor by October 28, 2011 which sets forth the Committee's recommendation regarding whether or not the State should establish a health insurance exchange. This report must also propose a plan of action based upon the aforementioned recommendation as follows:

a. Should the Committee recommend the establishment of a state-based health insurance exchange, the Committee must recommend a plan for the successful implementation and ongoing sustainability of a state-based health insurance exchange and, at a minimum, provide recommendations relating to:

- i. The governing structure (e.g., state agency or nonprofit entity);
- ii. The role(s) and function(s) of a health insurance exchange;
- iii. The design of qualified health plans offered in a health insurance exchange, including whether existing state mandates should be included in these plans;
- iv. Coordination of eligibility determination and enrollment between Medicaid and the Exchange and establishment of a policy for insureds who fluctuate between Medicaid and subsidized insurance coverage;
- v. Premium allocation;
- vi. Process for certifying health care plans;
- vii. Method for providing consumer information through internet portals;
- viii. Premium tax credits; and
- ix. Exchange funding and ways to hold down administrative costs.

b. Should the Committee recommend the State decline to establish a state-based health insurance exchange, the Committee must recommend alternate strategies and policies to improve the health insurance marketplace in South Carolina.

B. The Committee shall be comprised of twelve members appointed as follows:

6 EXECUTIVE ORDERS

1. The Project Manager of the Exchange Planning Grant, who shall serve in an *ex officio* capacity as chairman of the Committee;
2. Two members appointed by the President *Pro Tempore* of the Senate, at least one of which must be a member of the South Carolina Senate;
3. Two members appointed by the Speaker of the House of Representatives, at least one of which must be a member of the South Carolina House of Representatives;
4. The Director of the South Carolina Department of Health and Human Services or his designee;
5. The Director of the South Carolina Department of Insurance or his designee;
6. A consumer or not-for-profit representative appointed by the Governor;
7. A small employer as defined in S.C. Code Ann. 38-71-1330(18) appointed by the Governor;
8. A health care provider appointed by the Governor;
9. A licensed insurance producer authorized with accident and health insurance authority appointed by the Governor; and
10. A licensed health insurance issuer appointed by the Governor.

C. Members of the Committee must have substantial experience or expertise in one or more areas of health care delivery, health insurance, public health programs, or employer-sponsored health benefit programs. Members of the Committee shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

D. The members of the Committee must meet as soon as practicable after appointment but no later than April 15, 2011. The Directors of the South Carolina Department of Health and Human Services and the South Carolina Department of Insurance shall determine the date, time, and place for the initial organizational meeting and give notice of such to all Committee members. Thereafter, the Committee shall meet regularly and as necessary to fulfill the duties required by this Order at the call of the chairman or by a majority of the members. The Committee's meetings shall comply with the requirements of the South Carolina Freedom of Information Act.

E. The Committee may establish task forces from within its membership or outside its membership as needed to address specific issues or to assist in its work. These groups may include representatives of nongovernmental entities including, without limitation, doctors, nurses, economists, actuaries, health care professionals, patient advocates, public health advocates, consumer advocates, representatives from health plans and insurers, and businesses.

F. The Department of Insurance shall provide the Committee with the necessary staff support and resources.

Nothing in this Executive Order shall be construed to impair or otherwise affect the authority granted by law or gubernatorial directive over the functions of the South Carolina Department of Insurance. This Executive Order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity against the State of South Carolina, its departments, agencies, entities, officers, employees or agents or any other person.

This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 10th DAY OF MARCH, 2011.**

**NIKKI R. HALEY
Governor**

Executive Order No. 2011-10

WHEREAS, ensuring public confidence, integrity, and efficiency in our State Government is a major concern of this Administration; and

WHEREAS, this Administration is determined to take all measures necessary to detect, expose and prevent fraud, waste, mismanagement and misconduct in State Government; and

WHEREAS, Article IV, Section 17 of the South Carolina State Constitution provides that “[a]ll State officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices, agencies, and institutions, including itemized accounts of receipts and disbursements.”; and

WHEREAS, the interests of the State is best served by appointing a State Inspector General that reports directly to the Governor with authority encompassing all executive agencies.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of the State of South Carolina, I hereby appoint a State Inspector General with the duties, responsibilities, and authority as hereinafter set forth:

1. Mission of the State Inspector General.
 - a. To detect, expose and deter fraud, waste, mismanagement, misconduct and abuse in the programs and operations of all executive agencies encompassed within the authority found in S.C. Const. Art. IV, Sec. 17.
 - b. To report to agency heads and the Governor about problems and deficiencies relating to the administration of programs and operations in executive agencies.
 - c. To establish a toll-free public telephone number for the purpose of receiving information concerning fraud, waste, misconduct, mismanagement, and abuse in an executive agency.
 - d. To perform the mission of the State Inspector General in a manner that is consistent with state law and generally accepted governmental accounting standards.

2. Duties and Responsibilities. It shall be the duty and responsibility of the State Inspector General:
 - a. To initiate and coordinate investigative activities pursuant to the authority found in S.C. Const. Art. IV, Sec. 17 with the purpose of detecting and exposing fraud, waste, mismanagement and misconduct in executive agencies.
 - b. To recommend policies for and to conduct, supervise, and coordinate activities designed to deter, detect, prevent, and eradicate fraud, waste, misconduct, mismanagement and abuse in executive agencies.
 - c. To receive complaints from any individual, including those employed by any agency, alleging fraud, waste, misconduct, mismanagement and abuse and, as appropriate, advise individuals of state laws providing “whistleblower” protections.
 - d. To maintain confidentiality of any information received to the extent permitted by law.
 - e. To report expeditiously to and cooperate fully with the appropriate state and federal law enforcement agencies and prosecuting authorities whenever the State Inspector General has reasonable grounds to believe there has been a violation of criminal law or that a civil action should be initiated by the State.
 - f. To file a complaint with the State Ethics Commission if the State Inspector General has specific and credible evidence that a public employee or official has violated the State Ethics Act.
 - g. To refer matters to agency heads whenever the State Inspector General determines that disciplinary or other administrative action is appropriate.

8 EXECUTIVE ORDERS

3. Authority.

a. Upon request of the State Inspector General for information or assistance, cabinet agencies are directed to fully cooperate with and furnish the State Inspector General such information or assistance.

b. To require and obtain immediately by written notice from officers and employees of executive agencies to the extent allowed by S.C. Const. Art. IV, Sec. 17 all documents, reports, answers, records, accounts, papers, and other necessary data and documentary information to perform the mission of the State Inspector General.

c. Whenever information or assistance requested is, in the judgment of the State Inspector General, unreasonably refused or not provided, the State Inspector General may report to the agency head and the Governor for appropriate action to the extent permitted by law.

d. To assign staff as may be necessary for carrying out the functions, powers, and duties of the office.

e. To perform the duties and responsibilities of the State Inspector General in a manner that is consistent with state law and generally accepted governmental accounting standards.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 11th DAY OF MARCH, 2011.**

NIKKI R. HALEY
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**NOTICE**

The public is hereby notified that the Department of Health and Environmental Control is convening a Blue Ribbon Committee on Shoreline Management for the purpose of recommending improvements to the management of South Carolina's coastal shorelines. The Blue Ribbon Committee will consider and prioritize recommendations of the Shoreline Change Advisory Committee in determining improvements related to the state's beachfront jurisdictional area, beachfront retreat policy, beachfront emergency orders, and estuarine shoreline buffers and stabilization. If the Committee decides to pursue specific regulatory improvements as an outcome of its meetings, the Department will review and promulgate the proposed modifications to state regulations pursuant to the requirements of the S.C. Administrative Procedures Act and will initiate the statutory promulgation process by publication of a Notice of Drafting in the S.C. State Register.

In accordance with S.C Code of Laws Sections 30-4-10 et seq., all meetings of the Blue Ribbon Committee will be publicly noticed, and meeting minutes and other records will be archived and available for public review. Meeting notices will be posted on the Department's website, public meeting announcement boards and through media press releases. Meeting minutes and other documents associated with the Blue Ribbon Committee will be available on the Department's website as early as practicable following each meeting.

Parties interested in providing initial written comments on existing rules and policies related to ocean and coastal shoreline management should submit comments and related information to Carolyn Boltin-Kelly, Deputy Commissioner, Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**NOTICE**

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 March 25, 2011, 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 Mrs. Sarah "Sallie" C. Harrell, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Anderson County

Addition of ten (10) comprehensive rehabilitation beds for a total of fifty-five (55) comprehensive rehabilitation beds

AnMed Enterprises, Inc./HealthSouth, LLC d/b/a AnMed Health and Rehabilitation Hospital
Anderson, South Carolina
Project Cost: \$160,000

Establishment of a Home Health Agency restricted to the provision of pediatric home health services in Anderson County to children eighteen (18) years of age and younger
HomeChoice Partners, Inc.
Duncan, South Carolina
Project Cost: \$2,280

10 NOTICES

Affecting Greenville County

Conversion of twenty-two (22) existing institutional nursing home beds to community nursing home beds for a total of forty-four (44) community nursing home beds, which will not participate in the Medicaid (Title XIX) Program

Banyan Greenville Nursing Services, LLC d/b/a Linville Courts at the Cascades Verdae

Greenville, South Carolina

Project Cost: \$25,000

Affecting Greenwood County

Construction for the addition of eight (8) rehabilitation beds for a total of forty-two (42) rehabilitation beds and twelve (12) nursing care beds

Greenwood Regional Rehabilitation Hospital

Greenwood, South Carolina

Project Cost: \$1,905,939

Affecting Horry County

Addition of one (1) dedicated electrophysiology (EP) laboratory to be housed in shell space, to be upfitted as a part of this project, approved in CON SC-07-45

Grand Strand Regional Medical Center

Myrtle Beach, South Carolina

Project Cost: \$3,065,231

Construction for the relocation and replacement of an existing linear accelerator from the existing location of Carolina Regional Cancer Center in Myrtle Beach to a new cancer treatment center to be constructed in Murrells Inlet

Carolina Regional Cancer Center

Murrells Inlet, South Carolina

Total Project Cost: \$7,993,972

Affecting Spartanburg County

Establishment of a Home Health Agency restricted to the provision of pediatric home health services in Spartanburg County to children eighteen (18) years of age and younger

HomeChoice Partners, Inc.

Duncan, South Carolina

Project Cost: \$2,280

Affecting York County

Establishment of a Home Health Agency restricted to the provision of pediatric home health services in York County to children eighteen (18) years of age and younger

HomeChoice Partners, Inc.

Duncan, South Carolina

Project Cost: \$2,280

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from March 25, 2011. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Les W. Shelton, Division of Planning and Certification of

Need, 2600 Bull Street, Columbia, S.C. 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-4200.

Affecting Beaufort County

Establishment of a home health agency restricted to serve Beaufort County

SJC Home Health Services - Lowcountry
(St. Joseph's/Candler Home Health Services-Lowcountry)
Bluffton, South Carolina
Project Cost: \$241,086.04

Affecting Charleston County

Development of a fifty-nine (59) bed replacement facility in the former East Cooper Regional Medical Center location at 1200 Johnnie Dodds Boulevard, Mount Pleasant, SC by renovating the former East Cooper facility and relocating the existing Kindred facility; there will be no change in bed complement or medical services

Kindred Hospital Charleston
Mount Pleasant, South Carolina
Project Cost: \$29,944,000

Addition of a thirty-five (35) skilled nursing unit to be co-located in the former East Cooper Regional Medical Center location at 1200 Johnnie Dodds Boulevard, Mount Pleasant, SC, which will not participate in the Medicaid (Title XIX) Program

Kindred Hospital Charleston Subacute Unit
Mount Pleasant, South Carolina
Project Cost: \$3,250,000

Establishment of a freestanding Ambulatory Surgery Facility (ASF) with two (2) endoscopy rooms restricted to endoscopy procedures only.

The Colorectal EndoSurgery Institute of the Carolinas, LLC
Mount Pleasant, South Carolina
Project Cost: \$2,724,710

Affecting Spartanburg County

Construction of a free standing inpatient rehabilitation facility with twenty-eight (28) rehabilitation beds and twelve (12) nursing care beds which will not participate in the Medicaid (Title XIX) program for a total of forty (40) beds.

Spartanburg Rehabilitation Institute
Spartanburg, South Carolina
Project Cost: \$18,375,185

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

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 interested persons the opportunity to comment on the Department's response to meet obligations to the U.S. Environmental Protection Agency (EPA) for the National Ambient Air Quality Standards (NAAQS) for Lead. The Department proposes to address the requirements under sections 110(a)(1) and (2) of the Clean Air Act (CAA) for State Implementation Plans (SIP). These requirements assure attainment and maintenance of the NAAQS. To be considered, the Department must receive comments by 5:00 p.m. on April 25, 2011, the close of the comment period.

The Department is also providing the public with the opportunity to request a public hearing on the issue. If requested, the Department will hold a public hearing on Monday, May 9, 2011, at 2:00 p.m., in the Wallace Room of the Sims Building, 2600 Bull Street, Columbia, South Carolina. The Department invites the public to attend. However, 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 April 25, 2011, the Department will cancel the public hearing. If the Department cancels the public hearing, then the Department will notify the public at least one week prior to the scheduled hearing via the Scheduled Public Hearings webpage:

http://www.scdhec.gov/environment/baq/Regulation-SIPManagement/public_hearings.asp.

Interested persons may also contact Alan Hancock, Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via phone at (803) 898-4139 or email at hancocam@dhec.sc.gov for more information, or to find out if the Department will hold the public hearing.

Synopsis:

On November 12, 2008, the EPA published a revised NAAQS for Lead (73 FR 66964). The EPA lowered the primary and secondary standards to 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). Sections 110(a)(1) and (2) of the CAA require all states to submit plans to provide for the implementation, maintenance, and enforcement of new or revised standards. Sections 110(a)(1) and (2) further require states to address basic SIP requirements, including but not limited to the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a) requires states to submit SIPs within three (3) years after promulgation of a new or revised standard, or October 15, 2011, in this case.

On December 9, 2010, Governor Mark Sanford submitted a request to the EPA that it designate the entire state of South Carolina as "attainment" for the aforementioned Lead NAAQS. The Department is proposing to certify that it has addressed the aforementioned "infrastructure" elements pertaining to the Lead attainment areas in South Carolina. Pending any comments received, the Department will submit this certification to the EPA. This certification will specify how the Department complies with the aforementioned SIP elements for the Lead NAAQS.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

NOTICE OF INTENT TO REVISE THE SIP

REDESIGNATION DEMONSTRATION AND MAINTENANCE PLAN FOR THE YORK COUNTY
PORTION OF THE CHARLOTTE-GASTONIA-ROCK HILL NC-SC NONATTAINMENT AREA

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

South Carolina Air Quality Implementation Plan:

The Department of Health and Environmental Control (Department) proposes to submit a redesignation demonstration and maintenance plan for the South Carolina Air Quality Implementation Plan, also known as the State Implementation Plan, or SIP. Interested persons are invited to present their views in writing to Andrew O. Hollis; Division of Air Assessment, Innovations and Regulation, Bureau of Air Quality; 2600 Bull Street; Columbia, SC 29201. Comments may also be submitted via email to hollisao@dhec.sc.gov. To be considered, comments must be received no later than 5:00 p.m. on April 25, 2011, the close of the drafting comment period. The Department is also providing the public with the opportunity to request a public hearing on the issue. As such, a public hearing has been planned for May 2, 2011, at 10 a.m. in the Wallace Room (3141), 2600 Bull Street, Columbia, South Carolina. The public is invited to attend. However, pursuant to 40 CFR 51.102, if no request for a public hearing is received by the close of the comment period (April 25, 2011), the hearing will be cancelled. If a public hearing has been cancelled, the Department will notify the public at least one week prior to the scheduled hearing via the "Scheduled Public Hearings" link on the Regulation Development webpage at <http://www.scdhec.gov/environment/baq/regulatory.aspx>. Interested parties are also encouraged to contact Andrew Hollis at (803)-898-4196 or hollisao@dhec.sc.gov for more information or to determine whether a public hearing has been cancelled.

Synopsis:

In a *Federal Register* (FR) notice published on July 18, 1997 (62 FR 38856), the United States Environmental Protection Agency (EPA) promulgated amendments to the National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 (69 FR 23858), the EPA designated and classified a portion of York County, South Carolina within the Rock Hill Fort Mill Area Transportation Study (RFATS) Metropolitan Planning Organization (MPO) as a moderate nonattainment area for the 8-hour ozone NAAQS as part of the Charlotte-Gastonia-Rock Hill NC-SC Nonattainment Area.

Air quality monitoring data from 2008 to 2010 indicate that all monitors within the Charlotte-Gastonia-Rock Hill NC-SC Nonattainment Area currently meet the 1997 8-hour ozone NAAQS of 0.08 ppm. As such, the proposed SIP revision would request that the EPA redesignate the York County portion of the Charlotte-Gastonia-Rock Hill NC-SC Nonattainment Area to attainment for the 1997 8-hour ozone NAAQS and would provide a maintenance plan which fulfills the requirements of Section 175A of the Clean Air Act as amended, that will ensure the area remains in attainment of the 1997 8-hour ozone NAAQS through 2022. Documents relating to this redesignation request and maintenance plan will be available via the Department's website at: http://www.scdhec.gov/environment/baq/Metroolina-SC_Redesignation/

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

(Bureau of Air Quality Notice #11-015-Registration Permit)

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

The South Carolina Department of Health and Environmental Control (DHEC or Department) proposes to develop registration permits for Fuel Combustion Operations. Interested persons are invited to present their views in writing by 5:00 pm on April 25, 2011, to Karen Lee at SC DHEC, Engineering Services Division, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201 or by e-mail at: leeka@dhec.sc.gov. This public notice is being published in the *State Register* on March 25, 2011, and may also be viewed through April 25, 2011, on DHEC's website: <http://www.scdhec.gov/environment/baq/publicnotice.asp>.

Where there is a significant amount of public interest, DHEC may hold a public hearing to receive additional comments. If a public hearing is scheduled, notice will be given in the *State Register* and local newspapers thirty (30) days in advance. Public hearing requests can be made in writing or by e-mail to Karen Lee at the address or e-mail above. All comments received by April 25, 2011, will be considered when making a final decision to develop the permits.

If you have questions concerning the development of these permits, please contact Alyson Hayes at (803) 898-4123. A final review request may be filed after the permit decision has been made. Information regarding final review procedures is available from DHEC's legal office by calling (803) 898-3350.

If these registration permits involve land disturbing activities in one of the eight coastal counties of the Coastal Zone under DHEC-OCRM's jurisdiction, then a coastal zone consistency certification may be required prior to land disturbing activities.

Synopsis:

The Department is considering the development and implementation of a registration permit for fuel combustion operations with uncontrolled potential to emit less than the threshold for major source groups, and where equipment similarities and simplicity remove the need for in-depth, site-specific review.

Registration permits, as provided under S.C. Regulation 61-62.1, Section II(I), are applicable to similar sources. Any registration permit developed by the Department will specify compliance with all requirements applicable to the construction and operation of that specific category of stationary sources and will identify criteria by which sources qualify for the registration permit. Because the registration permit contains the same emission limits and monitoring requirements as a construction and operating permit may contain, a source that qualifies may elect to apply to the Department for coverage under a registration permit in lieu of a construction and operating permit as provided in S.C. Regulation 61-62.1, Section II (A) and (F).

Fuel Combustion Operations, for purposes of this permit, are considered to be any facility or plant that only has fuel combustion operations meeting the following criteria: the maximum size for a single boiler is limited to 30 million BTU/hr rated input capacity, and the fuel combustion sources are fired on only natural gas, propane, virgin fuel oil, used specification oil as defined in SC Regulation 61-62.1, Section I, and biodiesel.

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

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act.

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than April 25, 2011 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Bureau of Land and Waste Management - Underground Storage Tank Program
Attn: Michelle Dennison
2600 Bull Street
Columbia, SC 29201

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

Class I

TRC Environmental Corporation
Attn: A. Murphy Doty
22C New Leicester Hwy, Ste 220
Asheville, NC 28806

Geologic Restoration, PLLC
Attn: Brian E. Chew, Sr.
10120 Industrial Dr
Pineville, NC 28134

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

ERRATA

This errata corrects a notice that was published February 25, 2011, which contained an error in the project reference affecting Florence County.

Affecting Florence County

Construction for the replacement of a linear accelerator
QHG of South Carolina, Inc. d/b/a Carolinas Hospital System
Florence, South Carolina
Project Cost: \$8,396,807

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) proposes to amend R.61-69, Classified Waters. Interested persons are invited to submit their views and recommendations in writing to Gina L. Kirkland, Water Quality Standards Coordinator, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, written comments must be received no later than 5:00 p.m. on April 25, 2011, the close of the drafting comment period.

Synopsis:

The Department proposes to reclassify Reedy Cove Creek and Lake Chillywater from the current classification of Freshwaters (FW) to Outstanding Resource Waters (ORWs).

Reedy Cove Creek is a small tributary to Eastatooe Creek in Pickens County and was considered by the Department for ORW classification during an earlier evaluation conducted by the Department and the South Carolina Department of Natural Resources (DNR) of the waters located in the upstate of South Carolina. At that time in the mid 1990s, there was an existing NPDES discharge located at Camp McCall on Lake Chillywater. Reedy Cove Creek and Lake Chillywater, the small lake located in the middle of Reedy Cove Creek, were excluded in the reclassification due to this existing discharge. During the evaluation, it was determined that Reedy Cove Creek was an excellent candidate for ORW classification due to its significance as sensitive habitat area for several South Carolina threatened species. The NPDES discharge was recently eliminated and the Department believes these waters to be exceptional resource waters of the State and we are now considering naming Reedy Cove Creek, including its headwaters and Lake Chillywater, as ORWs of the State.

Legislative review will be required.

WORKERS' COMPENSATION COMMISSION
CHAPTER 67

Statutory Authority: 1976 Code Section 42-15-90

Notice of Drafting:

The South Carolina Workers' Compensation Commission proposes to amend Regulation 67-1302(A), Maximum Allowable Payments to Medical Practitioners. Interested persons may submit written comments to Gary Cannon, Executive Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Post Office Box 1715, Columbia, South Carolina 29202-1715. To be considered, all comments must be received no later than 5:00 p.m. April 26, 2011, the close of the drafting comment period.

Synopsis:

The Commission is proposing to amend Regulation 67-1302(A) to remove the limitation of using a relative value scale and one conversion factor set by the Commission. Under the current regulation, the Commission is limited to using a relative value scale and a single conversion factor when establishing maximum allowable payments for medical services provided by medical practitioners.

Legislative review of this amendment is required.

18 PROPOSED REGULATIONS

Document No. 4185
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27

Statutory Authority: 1976 Code Section 46-9-40

27-28. *Phytophthora ramorum* Quarantine

Preamble:

The State Crop Pest Commission proposes amending Regulation 27-78, a quarantine imposed for *Phytophthora ramorum*, to follow federal requirements related to this plant pathogen. *Phytophthora ramorum* manifests itself in a disease known as Sudden Oak Death or as ramorum blight. Certain areas of certain states are under either quarantine actions, or have had certain areas designated as regulated areas by the United States Department of Agriculture (USDA) in an attempt to prevent the spread of the disease, which could pose a serious threat to the export market and to domestic agricultural, horticultural and silvicultural activities. USDA Animal and Plant Health Inspection Service (APHIS) is issuing a Federal Order requiring that interstate shipping nurseries located either in counties that are established as quarantined areas or in regulated counties that have previously tested positive for *Phytophthora ramorum* provide pre-notification of shipments for certain high-risk plant species. The Federal Order goes into effect on March 1, 2011. The proposed amendment would result in conformity with this new Federal Order and any other statutes, regulations, orders or other requirements adopted by the federal government related to controlling and regulating this plant pathogen.

This regulation will not require legislative action.

Notice of Drafting for the proposed amendment was published in the *State Register* on November 26, 2010. No comments were received.

Section-by-Section Discussion

Sections 1 through 3 will remain the same.

Section 4. Movement of Regulated Articles

The proposed language authorizes the Clemson University Department of Plant Industry to enforce any federal statutes, regulations, orders or other requirements related to *Phytophthora ramorum* and ensures consistency with federal law.

The remainder of this section is stricken to ensure consistency with federal requirements related to this pathogen.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110 (A)(3) of the S.C. Code, as amended, such hearing will be held on April 29, 2011 at 10:00 A.M. in Conference Room 1, Center for Applied Technology, 511 Westinghouse Road, Pendleton, S.C. 29670. Persons desiring to make oral comment at the hearing are asked to provide written copies of their presentation for the record. If a qualifying request pursuant to Section 1-23-110 (A)(3) is not timely received, the hearing will be cancelled.

Interested parties are also invited to submit written comments to the proposed amendments by writing to Dr. David Howle, Department of Plant Industry, 511 Westinghouse Road, Pendleton, SC 29670. To be considered, comments must be received no later than the close of business on April 25, 2011.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: The proposed amendments (as indicated below) are designed to ensure South Carolina can enforce the new federal order issued by USDA APHIS, and to ensure consistency with federal law.

Legal Authority: The legal authority for these amendments is Section 46-9-40, South Carolina Code of Laws.

Plan for Implementation: The proposed amendments will take effect upon approval by the General Assembly and publication in the State Register. The proposed amendments will be implemented by providing copies to the regulated community and media notices to the general public.

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

The proposed amendments allow for enforcement by state officials of the new USDA APHIS Federal Order requiring pre-notification by interstate shipping nurseries located either in counties that are established as quarantined areas or in regulated counties that have previously tested positive for *Phytophthora ramorum* that ship certain high-risk plant species to South Carolina. The advance notification enhances the traceability of potentially infected nursery stock and helps prevent the spread of harmful plant diseases caused by *Phytophthora ramorum*. These amendments ensure that South Carolina efforts to control this plant pathogen are consistent with this Federal Order and any other federal requirements that may apply to movement of regulated articles.

DETERMINATION OF COSTS AND BENEFITS:

The general public, nursery owners, foresters, and property owners throughout the state will benefit from efforts to prevent the spread of this plant pathogen in South Carolina.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed amendments should help the Department of Plant Industry take steps to prevent the spread of *Phytophthora ramorum* in conformance with federal law.

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

If these amendments are not adopted, it would be much more difficult to trace and prevent the spread of this plant pathogen in South Carolina.

Statement of Rationale:

Amendment of this regulation is necessary to ensure compliance with federal requirements related to the regulation of *Phytophthora ramorum*.

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Text:

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

Document No. 4186
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOIL CLASSIFIERS ADVISORY COUNCIL
CHAPTER 108
Statutory Authority: 1976 Code Section 40-65-60

108-1 through 108-8. Soil Classifiers

Preamble:

The South Carolina Soil Classifiers Advisory Council proposes to draft regulations to conform to changes in S.C. Code Section 40-65-10 et seq., Act No. 249, effective June 11, 2010.

A Notice of Drafting was published in the *State Register* on September 24, 2010.

Section-by-Section Discussion

The following is a section-by-section discussion of the regulations proposed by the Soil Classifiers Advisory Council:

108-1. Definitions.

New section defining terms used in the statute and regulations.

108-2. Licensure.

New section regarding licensure of soil classifiers.

108-3. Seals.

New section detailing the seals for soil classifiers.

108-4. License Expiration, Renewal, and Reinstatement.

New section regarding license expiration, renewals, and reinstatement.

108-5. Continuing Education.

New section detailing continuing education requirements.

108-6. Examinations.

New section regarding examination requirements for professional soil classifiers and soil classifiers-in-training.

108-7. Fees.

New section regarding fees for licensure of soil classifiers.

108-8. Code of Ethics.

New section providing a code of ethics for the council.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws of South Carolina, as amended, such hearing will be conducted before the Administrative Law Court at 1:00 p.m. on Monday, May 9, 2011. Written comments may be directed to Sherri Moorer, Program Assistant, Soil Classifiers Advisory Council, Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m. on Monday, April 25, 2011.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

The South Carolina Soil Classifiers Advisory Council proposes to promulgate regulations which address examinations, levels of licensure, license renewal, continuing education, and recognition of credentials from other licensing jurisdictions.

DESCRIPTION OF REGULATION:

Purpose: To add regulations for continuing education and licensure.

Legal Authority: Statutory Authority: 1976 Code Section 40-65-60.

Plan for Implementation: Administratively, the council will see that these provisions are implemented by informing the public through written and oral communications, and posting all changes on its website.

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

These regulations need to be promulgated in order to implement 2010 Act No. 249.

DETERMINATION OF COSTS AND BENEFITS:

There will be no additional cost incurred by the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no direct effect on the environment. The public health and the business environment of this State will be enhanced by conforming the regulations to the statute.

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

There will be no direct detrimental effect on the environment and public health of this State if the regulations are not implemented in this State.

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Statement of Rationale:

The regulations are added to conform to 2010 Act No. 249.

Text:

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

Document No. 4177
DEPARTMENT OF INSURANCE
 CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-57-10 et seq.

69-29. Suitability in Annuity Transactions

Synopsis:

The South Carolina Department of Insurance proposes to promulgate Regulation 69-29, Suitability in Annuity Transactions. The regulation will set forth standards to be followed by insurers, agencies and producers in the sale and negotiation of annuity products. The regulation will set forth policies and procedures for the suitability of annuity recommendations and will require insurers to establish a system to supervise recommendations so that the insurance needs and financial objectives of consumers are appropriately addressed.

A Notice of Drafting was published in the *State Register* on September 24, 2010.

Instructions:

Add Regulation 69-29 as drafted below to the South Carolina Code of Regulations.

Text:

Section I. Purpose

A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Section II. Scope

This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section III. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

B. Contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

24 FINAL REGULATIONS

(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(6) Formal prepaid funeral contracts.

Section IV. Definitions

As used in this regulation, unless the context otherwise requires:

A. "Annuity" means each contract or agreement to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

B. "Continuing education credit hour or "credit hour" means one continuing education credit as defined in S.C. Code of Regulations 69-50.

C. "Continuing education approved sponsor" or "CE Approved Sponsor" means an individual or entity that is approved to offer continuing education courses pursuant to S.C. Code of Regulations 69-50.

D. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

E. "Insurer" means a company required to be licensed under the laws of this State to provide insurance products, including annuities and as further defined in S.C. Code Section 38-1-20(33).

F. "Insurance producer" or "producer" means a person required to be licensed pursuant to S.C. Code Section 38-43-10 et seq. to sell, solicit or negotiate insurance, including annuities.

G. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.

H. "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer involved, that by reason of the transaction, an existing policy or contract has been or is to be:

(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

I. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;

(2) Annual income;

(3) Financial situation and needs, including the financial resources used for the funding of the annuity;

(4) Financial experience;

(5) Financial objectives;

(6) Intended use of the annuity;

(7) Financial time horizon;

(8) Existing assets, including investment and life insurance holdings;

(9) Liquidity needs;

(10) Liquid net worth;

(11) Risk tolerance; and

(12) Tax status.

Section V. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other

insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. The requirements of this section supplement and do not replace the disclosure requirements of South Carolina Code of Regulations 69-39.

(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The consumer would benefit from product enhancements and improvements; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

D.(1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C of this section related to any annuity transaction if:

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(1) Make a record of any recommendation subject to this regulation;

(2) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

F.(1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

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(a) The insurer shall maintain reasonable procedures to inform its producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of this regulation;

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity; and

(f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2)(a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section VII of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.

(b) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under this paragraph. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of suitability information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

H.(1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the director's ability to enforce (including investigate) the provisions of this regulation.

(2) For paragraph (1) to apply, an insurer shall:

(a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section VI. Insurance Producer Training

A. An insurance producer shall not sell, solicit, or negotiate an annuity product unless the producer:

- (1) is authorized as an insurance producer for life insurance products;
- (2) has adequate knowledge of the product to recommend the annuity;
- (3) has completed a one-time training course as set forth in subsection B of this section; and
- (4) is in compliance with the insurer's standards for product training.

A producer may rely on insurer-provided product-specific training standards and materials to comply with the insurer's standards for product training.

B.(1)(a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) hour training course.

(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credit hours, but may be longer.

(3) The training required under this subsection shall include at a minimum information on the following topics:

- (a) The types of annuities and various classifications of annuities;
- (b) Identification of the parties to an annuity;
- (c) How fixed, variable and indexed annuity contract provisions affect consumers;
- (d) The application of income taxation of qualified and non-qualified annuities;
- (e) The primary uses of annuities; and
- (f) Regulatory requirements relating to sales practices, replacement and disclosure requirements.

Additional topics may be offered in conjunction with and in addition to the required outline.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE Approved Sponsor in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in S.C. Code of Regulations 69-50

(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with S.C. Code Section 38-43-106 and S.C. Code of Regulations 69-50.

(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with S.C. Code of Regulations 69-50.

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by NAIC-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with CE Approved Sponsors.

Section VII. Compliance, Penalties

A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the director may order:

- (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;
- (2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the violation of this regulation; and

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(3) Appropriate penalties and sanctions pursuant to S.C. Code Section 38-2-10.

B. Any applicable penalty under S.C. Code Section 38-2-10 for a violation of this regulation may be reduced or eliminated if the director determines that corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Section VIII. Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section IX. Effective Date

This regulation shall become effective six (6) months following final publication in the *State Register* and shall apply to contracts sold on or after the effective date of this regulation.

Fiscal Impact Statement:

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

Statement of Rationale:

The Suitability in Annuity Transactions regulation is being promulgated to comply with Public Law 111-203, the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” The regulation clarifies the scope of the exemption for annuities and insurance contracts from federal regulation and ensures that the state will be able to regulate these annuity products. The regulation will provide guidance to licensees of the Department who sell annuity products.