

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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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.

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REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

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

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4163			Board of Landscape Architectural Examiners	1/19/12	Board of Landscape Architectural Exam
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
4174			Hazardous Waste Management Regulations	2/21/12	Department of Health and Envir Control
4175			Hazardous Waste Management Planning	2/21/12	Department of Health and Envir Control
4176			Capital Expenditure Reviews Under Section 1122, Social Security Act	2/21/12	Department of Health and Envir Control
4180			Minimum Standards for Licensing Chiropractic Facilities	2/21/12	Department of Health and Envir Control
4182			Licensure for the Savannah River	3/19/12	Commissioners of Pilotage
4179			Electronic Equipment Collection and Recovery	3/24/12	Department of Health and Envir Control
4181			Certification of Need for Health Facilities and Services	5/07/12	Department of Health and Envir Control
Committee Request Assessment Report					
4132			Environmental Protection Fees (Radioactive Material Licenses Fees)	Tolled	Department of Health and Envir Control
4139			Environmental Protection Fees (Drinking Water Fees)	Tolled	Department of Health and Envir Control
Committee Request Withdrawal					
4168			Perpetual Care Cemetery Board	Tolled	SC Perpetual Care Cemetery Board
4164			Child Labor	Tolled	Division of Labor
4183			International Residential Code	Tolled	LLR-Building Codes Council
4184			Update of International and National Codes	Tolled	LLR-Building Codes Council
Resolution Introduced to Disapprove					
4126			South Carolina Pesticide Control (R.27-1079 only)	Tolled	Clemson University-State Crop Pest Comm.

2 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

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
4163	Board of Landscape Architectural Examiners	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
4174	Hazardous Waste Management Regulations	Agriculture and Natural Resources	Medical Affairs
4175	Hazardous Waste Management Planning	Agriculture and Natural Resources	Medical Affairs
4176	Capital Expenditure Reviews Under Section 1122, Social Security Act	Ways and Means	Medical Affairs
4180	Minimum Standards for Licensing Chiropractic Facilities	Medical, Military, Pub & Mun Affairs	Medical Affairs
4182	Licensure for the Savannah River	Agriculture and Natural Resources	Labor, Commerce and Industry
4179	Electronic Equipment Collection and Recovery	Agriculture and Natural Resources	Medical Affairs
4181	Certification of Need for Health Facilities and Services	Medical, Military, Pub & Mun Affairs	Medical Affairs
Committee Request Assessment Report			
4132	Environmental Protection Fees (Radioactive Material Licenses Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
4139	Environmental Protection Fees (Drinking Water Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
Committee Request Withdrawal			
4168	Perpetual Care Cemetery Board	Labor, Commerce and Industry	Labor, Commerce and Industry
4164	Child Labor	Labor, Commerce and Industry	Labor, Commerce and Industry
4183	International Residential Code	Labor, Commerce and Industry	Labor, Commerce and Industry
4184	Update of International and National Codes	Labor, Commerce and Industry	Labor, Commerce and Industry
Resolution Introduced to Disapprove			
4126	South Carolina Pesticide Control (R.27-1079 only)	Agriculture and Natural Resources	Agriculture and Natural Resources

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 August 26, 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 Dorchester County

Construction for the establishment of a free standing Ambulatory Surgical Facility (ASF) with two (2) endoscopy suites
Elms Endoscopy Center of Dorchester County
St. George, South Carolina
Project Cost: \$2,841,480

Affecting Edgefield County

Establishment of a home health agency restricted to serve Edgefield County
Community Health, Inc.
Edgefield, South Carolina
Project Cost: \$78,981

Affecting Horry County

Construction for the establishment of a new radiation therapy service in a center attached to the main hospital
Grand Strand Regional Medical Center
Myrtle Beach, South Carolina
Project Cost: \$9,788,625

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 August 26, 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 Charleston County

Renovation for the purchase and installation of a 1.5T Magnetic Resonance Imaging (MRI) unit to be located at 2550 Elms Center Road
Palmetto Primary Care Physicians, LLC
North Charleston, South Carolina
Project Cost: \$1,634,954.01

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Affecting Greenville County

Initiation of mobile Positron Emission Tomography/Computed Tomography (PET/CT) services two (2) days per week at 125 Commonwealth Drive, Greenville, SC
Bon Secours St. Francis Hospital – Eastside
Greenville, South Carolina
Project Cost: \$808,855

Affecting Horry County

Purchase and installation of a linear accelerator for a new cancer treatment center to be established in an existing medical office building located in Conway, SC
Carolina Regional Cancer Center, LLC - Conway
Conway, South Carolina
Project Cost: \$5,107,613

Renovation of existing space for the replacement of an open 0.3T Magnetic Resonance Imaging (MRI) unit with a fixed 1.5T MRI
Seacoast Medical Center
Little River, South Carolina
Project Cost: \$2,019,256.10

Affecting Pickens County

Construction of a fifty (50) bed addition to accommodate the transfer of forty-four (44) nursing home beds from Redeemer Health & Rehab of Pickens (Pickens, SC) and six (6) nursing home beds from Capstone Health & Rehab of Easley (Easley, SC) for a total licensed bed capacity of one hundred-thirty (130) nursing home beds
Manna Health & Rehab of Pickens, LLC
Pickens, South Carolina
Project Cost: \$3,723,624

Affecting Spartanburg County

Construction for the addition of six (6) rehabilitation beds to its existing program for a total of twenty-four (24) rehabilitation beds
Mary Black Memorial Hospital
Spartanburg, South Carolina
Project Cost: \$113,929

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

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

The South Carolina Department of Health and Environmental Control (SC DHEC), Bureau of Air Quality (BAQ), does hereby give notice of authorization being granted to the below listed sources who have requested coverage under the General Conditional Major Operating Permit for Concrete Plants. Interested persons may review the general permit and the individual facility information on our website at: <http://www.schec.gov/environment/baq/permitting/generalpermits/>

This general permit was previously open for a thirty (30) day public comment period starting on May 27, 2011, with issuance on June 30, 2011. Pursuant to South Carolina Regulation 61-62.1, Section II G(7)(a)&(b), SC DHEC may now grant coverage to any qualified sources seeking to operate under the terms and conditions of the general permit.

Charleston County

Wando Concrete, LLC
2025 Cherry Hill Lane
Charleston, SC
(Air Permit No. 9900-0385)

Lancaster County

J&S, Inc. – Plant #2
5554 Charlotte Highway
Lancaster, SC
(Air Permit No. 9900-0304)

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

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 September 26, 2011 to:

6 NOTICES

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 II

Hazmat Emergency Response & Remediation, Inc.
Attn: Marc Cox
PO Box 381
Tabor City, NC 28463

DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF ELEVATORS AND AMUSEMENT RIDES

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of Elevators and Amusement Rides hereby adopts the latest edition of the following nationally recognized code.

1. Safety Code for Elevators and Escalators, ASME A17.1-2010/CSA B44-10, 2010 Edition
2. The original promulgating authority for this code is:
The American Society of Mechanical Engineers
22 Law Drive/Box 2300
Fairfield, New Jersey 07007-2300
3. This code is referenced by:
South Carolina Code of Laws, Sections 41-16-10 et seq.
Elevator Safety Regulations (SCRR) 71-5100 (1.)

The Office of Elevators and Amusement Rides specifically requested comments concerning sections of this edition which may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of Elevators and Amusement Rides will promulgate this latest edition without amendment.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF STATE FIRE MARSHAL**

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 58, Liquefied Petroleum Gas Code, 2011 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Code of Laws, Section 40-82-70
State Fire Marshal Regulations (SCRR) 71-8300.2 (L)

The Office of State Fire Marshal specifically requested comments concerning sections of this edition which may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal will promulgate this latest edition without amendment.

8 DRAFTING NOTICES

**CLEMSON UNIVERSITY
STATE LIVESTOCK-POULTRY HEALTH COMMISSION
CHAPTER 27**

Statutory Authority: 1976 Code Sections 47-4-30 and 47-17-130

Notice of Drafting:

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection of meat and meat food products produced for intrastate commerce.

Interested parties should submit written comments to Dr. Clyde B. Hoskins, Interim Director, State Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, S. C. 29224-2406. To be considered comments should be received no later than September 27, 2011, the close of the drafting comment period.

Synopsis:

This regulation is being promulgated to comply with the Federal Meat Inspection Act (21 USDA 661, Section 301) which establishes Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will, in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays and other similar requirements.

This regulation will not require legislative action.

**CLEMSON UNIVERSITY
STATE LIVESTOCK-POULTRY HEALTH COMMISSION
CHAPTER 27**

Statutory Authority: 1976 Code Sections 47-4-30, 47-19-30, and 47-19-170

Notice of Drafting:

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce.

Interested parties should submit written comments to Dr. Clyde B. Hoskins, Interim Director, State Meat-Poultry Inspection Department, P. O. Box 102406, Columbia, S.C. 29224-2406. To be considered comments should be received no later than September 27, 2011, the close of the drafting comment period.

Synopsis:

This regulation is being promulgated to comply with the Poultry Products Inspection Act (21 USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will, in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays, and other similar requirements.

This regulation will not require legislative action.

DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 40-58-10 et seq.,
particularly Section 40-58-100

Notice of Drafting:

The South Carolina Department of Consumer Affairs proposes to amend R.28-400 addressing Licensing of Mortgage Brokers and Loan Originators. Interested parties are invited to present their views in writing to Charles Knight, Staff Attorney, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, SC 29250. To be considered, comments must be received no later than 5 p.m. on September 30, 2011, the close of the drafting comment period.

Synopsis:

The “Licensing of Mortgage Brokers Act” (Act) was heavily amended January 1, 2010 to be in compliance with the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (SAFE Act). The United States Department of Housing and Urban Development (HUD) recently promulgated rules pertaining to the SAFE Act (24 CFR Parts 30 and 3400). This regulation is being promulgated to comply with the HUD rules and to conform the regulation title and code sections cited to the revised Act. Further, state-specific items will be clarified, deleted or modified to meet the new statutory language and authority, including license and record-keeping requirements.

The regulation will require legislative review.

DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 44-79-10 et seq.,
particularly Section 44-79-90

Notice of Drafting:

The South Carolina Department of Consumer Affairs proposes to amend R.28-100 addressing Physical Fitness Centers. Interested parties are invited to present their views in writing to Danny Collins, Deputy for Regulatory Enforcement, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, SC 29250. To be considered, comments must be received no later than 5 p.m. on September 30, 2011, the close of the drafting comment period.

Synopsis:

R.28-100 was promulgated with an initial effective date of April 27, 1990 and was last amended February 23, 1994. The purposes of the amendment are to revise the title of the regulation and address the financial responsibility requirements for physical fitness centers, to include bond and letter of credit amounts. Clarification of the Department’s investigative authority and physical fitness recordkeeping requirements will also be provided.

The regulation will require legislative review.

10 DRAFTING NOTICES

DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 28

Statutory Authority: 1976 Code Sections 32-7-10 et seq., particularly Sections 32-7-60(I), 32-7-95(E) and 32-7-110(A)

Notice of Drafting:

The South Carolina Department of Consumer Affairs proposes to promulgate R.28-800 addressing Preneed Funeral Contracts and Providers. Interested parties are invited to present their views in writing to Danny Collins, Deputy for Regulatory Enforcement, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, SC 29250. To be considered, comments must be received no later than 5 p.m. on September 30, 2011, the close of the drafting comment period.

Synopsis:

The Legislature transferred the authority to administer the “Preneed Funeral Contracts” statute (Section 37-2-10) to the Department of Consumer Affairs in 2005, granting enforcement authority to the agency in 2009. The statute puts forth requirements for those persons offering and/or providing preneed funeral contracts in this State.

The proposed regulation will clarify undefined terms of the statute, to include what constitutes a location and other action, and will address the financial responsibility requirements of preneed funeral contract providers. Procedures for the transfer of preneed funeral contracts and the allocation of service charges will also be provided.

The regulation will require legislative review.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60 (2004), 59-5-65 (2004 & Supp. 2010), and 59-59-10 et seq. (Supp. 2010)

Notice of Drafting:

The State Board of Education proposes to amend regulation 43-274.1, At-Risk Students. Interested persons may submit their comments in writing to John Lane, Office of Student Intervention Services, Division of Accountability, 1429 Senate Street, Room B-14, Columbia, South Carolina 29201 or by e-mail to jllane@ed.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. on September 26, 2011.

Synopsis:

Regulation 43-274.1, At-Risk Students, establishes a definition for “at-risk student” and identifies at-risk student indicators, predictors, and barriers. The regulation also sets the parameters schools must use to select, implement, and evaluate at-risk student program models. The regulation must be revised to change the South Carolina Department of Education’s acronym to SCDE and note the use of the Palmetto Assessment of State Standards (PASS), rather than PACT, as one of several indicators of potential dropouts.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60 (2004), 59-18-110 (Supp. 2010), 59-29-10 et seq. (2004), 59-29-200 (2004), 59-33-30 (2004), 59-53-1810 (Supp. 2010), 20 U.S.C. 1232(g), and 20 U.S.C. 6301 et seq.

Notice of Drafting:

The State Board of Education proposes to amend regulation 43-234, Defined Program, Grades 9–12. Interested persons may submit their comments in writing to Darlene Prevatt, Office of Accreditation, Division of Federal and State Accountability, 1429 Senate Street, Room 501-A, Columbia, South Carolina 29201 or by e-mail to dprevatt@ed.sc.gov. To be considered, all comments must be received no later than 5:00 p.m. on September 26, 2011.

Synopsis:

Regulation 43-234, Defined Program, Grades 9–12, establishes that each school board of trustees must ensure quality schooling by providing a rigorous, relevant curriculum for all students. The regulation also stipulates that each school district must offer a standards-based academic curriculum organized around a career cluster system that provides students with individualized education choices. An amendment to the regulation will clarify language in I. and VIII, and propose language to address proficiency based credit.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60 (2004) and 59-40-10 et seq. (2004 and Supp. 2010); Public Law 111–117, December 16, 2001, Consolidated Appropriations Act, 2010

Notice of Drafting:

The State Board of Education is considering amending R.43-601, Procedures and Standards for Review of Charter School Applications, to make the termination and renewal process consistent with federal law.

Interested parties should submit written comments to Mark Bounds, Deputy Superintendent, Division of School Effectiveness, South Carolina Department of Education, 3700 Forest Drive, Suite 500, Columbia, SC 29204, or email them to mbounds@leaders.ed.sc.gov. To be considered comments must be received no later than September 26, 2011 at 5:00 pm.

Synopsis:

This regulation sets forth the standards for the review of charter school applications. To qualify for federal charter school funds, certain assurances need to be met. One of those assurances is that student academic achievement for all groups of students must be the primary factor in when determining to renew or revoke a school's charter. We are proposing to amend R.43-601 to require that for charter schools that receive federal charter school grant funds, student academic performance be the most important factor in the renewal or revocation of a charter.

Since this is a requirement of federal law, this amendment will not require the approval of the General Assembly.

12 PROPOSED REGULATIONS

Document No. 4193

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 49-4-10 et seq. (2010 Act No. 247)

- (1) Proposed New R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting
- (2) Proposed Repeal of Regulations 121-10, Water Use Reporting and Coordination, and 121-12, Interbasin Transfer of Water

Preamble:

Act 247 of 2010 substantially amended Sections 49-4-10 et seq. of the 1976 S.C. Code of Laws, renaming these sections as the South Carolina Surface Water Withdrawal, Permitting, Use and Reporting Act. The Department is proposing to promulgate a new regulation to implement the provisions of this Act. This new regulation will establish a system and rules for permitting the withdrawal and use of surface water from within the State of South Carolina and those surface waters shared with adjacent states. This regulation will apply to any person withdrawing surface water in excess of three million gallons during any one month.

The Department is also simultaneously repealing Regulations 121-10 and 121-12, which would become obsolete upon promulgation of the new regulation and are not consistent with existing law.

A Notice of Drafting for these proposed regulations was published in the *State Register* on August 27, 2010. A second Notice of Drafting was published in the *State Register* on May 27, 2011. This second notice extended the time necessary for the Department to promulgate the proposed regulations within the one-year statutory timeframe pursuant to S.C. Code Ann. Section 1-23-120(A) of the S.C. Administrative Procedures Act.

Legislative review of this proposed promulgation will be required.

Discussion of Proposed New Regulation:

R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting

Section A. Purpose and Scope. This section addresses the purpose and scope and identifies the enabling statute for this regulation. The standards developed in this regulation are necessary to maintain, conserve, and protect the surface water resources of South Carolina by establishing a system of rules for permitting the withdrawal and use of surface water from within the state and those waters shared with adjacent states. This regulation replaces and incorporates regulations for the modified "South Carolina Surface Water Withdrawal and Reporting Act" (Chapter 4, Title 49 of the 1976 Code) and the repealed "Interbasin Transfer of Water Act" (Chapter 21, Title 49 of the 1976 Code).

Section B. Definitions. This section includes definitions for the following 34 terms: 'Administratively Complete', 'Affected area', 'Agriculture facility', 'Agricultural use', 'Consumptive use', 'Department', 'Diffuse surface water', 'Drought contingency pond', 'Emergency withdrawal', 'Existing surface water withdrawer', 'Farm pond', 'Gauging station', 'Impoundment', 'Interbasin transfer', 'Licensed or otherwise flow controlled Impoundment', 'Mean annual daily flow', 'Minimal changes in water quantity', 'Minimum instream flow', 'Minimum water level', 'Nonconsumptive use', 'Permit' or 'surface water withdrawal permit', 'Permitted surface water withdrawer', 'Permittee', 'Person', 'Proposed registered surface water withdrawer', 'Public water system', 'Registered surface water withdrawer', 'River basin', 'Safe yield', 'Supplemental water source', 'Surface water', 'Surface water withdrawer', 'Water Supply Only Reservoir', and, 'Withdrawal'.

Section C. Exemptions. This section defines activities that are exempt from the permitting, registering, and reporting requirements provided for in this regulation.

Section D. Permits for Existing Surface Water Withdrawers as of January 1, 2011. This section provides application requirements, operations and contingency plan requirements, information on additional flow requests and informational items to be included in each permit. This section applies only to existing withdrawers as of January 1, 2011 as defined by the Act.

Section E. Permits for New or Expanding Surface Water Withdrawers after January 1, 2011. This section provides the requirement to obtain a permit for withdrawal, application requirements, evaluation criteria, operations and contingency plan requirements and informational items to be included in each permit. This section applies only to new or expanding withdrawers after January 1, 2011.

Section F. Public Notice Requirements for New or Expanding Surface Water Withdrawers after January 1, 2011, and Renewal or Modification of All Permits. Procedures for public notice of new or expanding withdrawals are included in this section along with delineation of fifteen river basins in the state to be used when determining the affected area for a particular surface water withdrawal application.

Section G. Nonconsumptive Use Surface Water Withdrawal Permits. This section provides requirements to be considered a nonconsumptive use withdrawal along with application information and details on information to be included in the permit.
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Section H. Permit Duration. Allowable permit durations as provided for in the Act are specified in this section.

Section I. Renewal Process for Surface Water Withdrawal Permits. Procedures for renewal of surface water withdrawal permits are included in this section.

Section J. Action on Permit Applications, Modifications, Revocations and Denials. This section provides information regarding the Department's ability to transfer, modify, suspend, or revoke a permit under certain conditions.

Section K. Existing Interbasin Transfer Permits and Registrations. This section addresses interbasin transfer permits and registrations in existence on January 1, 2011, and requirements for renewal of these permits and registrations as surface water withdrawal permits upon expiration of the permits and registrations issued under Chapter 21, Title 49 of the 1976 Code, which was repealed effective January 1, 2011 by the enabling act of this regulation.

Section L. Registration of Agricultural Withdrawals. This section addresses procedures for the registration of existing agricultural withdrawals as of January 1, 2011, the registration of new agricultural withdrawals after January 1, 2011, and the modification of a registration. Registered withdrawals for agricultural activities are not subject to the permitting requirements of this regulation (unless the withdrawer requests a permit); however, they are subject to the reporting requirements of this regulation.

Section M. Temporary Permits and Emergency Withdrawals. This section specifies the Department's authority to issue a temporary permit allowing a withdrawal for not more than one hundred eighty days to a new applicant while his application for a surface water withdrawal permit is pending. This section also addresses emergency withdrawals, which are exempt from the permitting requirements of this regulation, that are allowed for periods of no more than thirty consecutive days.

Section N. Reporting. This section addresses the requirement to report the volume of water withdrawn from surface waters in South Carolina by any person permitted or registered to withdraw more than three million gallons from any surface water body within any one month.

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Section O. Enforcement. This section addresses the Department's authority to enforce provisions of this regulation and assess penalties, which must be deposited in the State's general fund.

Section P. Other Department Authority. This section addresses the Department's authority, in conjunction with the Department of Natural Resources, to negotiate agreements, accords and compacts on behalf of the State and to represent the State in connection with water withdrawals, diversions, or transfers occurring in other states that may affect South Carolina. It further authorizes other powers and duties the Department may utilize to carry out the duties and responsibilities provided in this regulation.

Section Q. Surface Water Permitting and Withdrawal Fees. This section specifies the fees that the Department is authorized to assess for issuance, modification, and renewal of a permit to withdraw surface water in South Carolina, along with provisions for an annual operating fee for each permitted intake. This section further specifies how and when these fees will be assessed, how the Department will address non-payment of fees and appeal rights associated with assessment of fees.

Section R. Compliance With Other Statutes and Regulations. This section specifies that nothing in this regulation relieves any person regulated by the regulation of the duty to comply with all other statutes and regulations.

Section S. Severability Clause. This section specifies that, if any portion of the regulation is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portion of the regulation.

Notice of Staff Informational Forum and Public Comment Period:

Staff of the Department of Health and Environmental Control invites interested members of the public and regulated community to attend a staff-conducted informational forum to be held on September 21, 2011 at 10:00 a.m. in Peeples Auditorium, third floor of the Sims Building at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The purpose of the forum is to answer questions, clarify issues, and receive public comments from interested parties on the proposed regulations. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street Entrance and register at the front desk.

Interested parties are also provided an opportunity to submit written comments on the proposed regulations by writing to Charles Gorman, P.G., Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, Fax number (803) 898-2893. To be considered, written comments submitted must be received no later than 5:00 p.m. on September 26, 2011, the close of the public comment period.

Copies of the Notice of Proposed Regulation and text of the proposed regulations for public notice and comment may be obtained by contacting Michael Bishop at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-3553, Fax number (803) 898-2893, or from the Department's Regulatory Information website at <http://www.scdhec.gov/administration/regs/reg-update.htm> (Scroll down and click on the Water category, and then scan down for this proposed regulation).

Comments received at the forum and/or submitted in writing by the close of the public comment period as noticed above shall be considered by staff in formulating the final text of the proposed regulations and shall be submitted in a Summary of Public Comments and Department Responses for consideration by the Board of Health and Environmental Control at the public hearing scheduled for October 13, 2011, as noticed below.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral and written comments on the proposed regulations at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on October 13, 2011. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street Entrance and register at the front desk.

Preliminary Fiscal Impact Statement:

The regulatory program will be fee funded. No additional cost will be incurred by the State or its political subdivisions by implementation of the proposed Regulation R.61-119. No additional state funding is being requested.

However, Act 247 of 2010 states that fees established by the Act are repealed effective January 1, 2013. Further, no new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: (1) Proposed New R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting. (2) Proposed Repeal of Regulations 121-10, Water Use Reporting and Coordination, and 121-12, Interbasin Transfer of Water.

Purpose: The Department is proposing to simultaneously repeal Regulations 121-10 and 121-12 and replace them with a proposed new regulation to addresses the statutory provisions of S.C. Code Ann. Section 49-4-10 et seq. which was substantially amended by Act 247 of 2010.

Legal Authority: S.C. Code Ann. Sections 49-4-10 et seq. (2010 Act No. 247)

Plan for Implementation: The proposed regulation will take effect upon approval by the Board of Health and Environmental Control, the General Assembly and publication in the State Register. Staff will implement the new regulations in the review of all aspects of surface water withdrawal, permitting, use and reporting as defined by the regulation.

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

The proposed regulation is required to implement the provisions of Sections 49-4-10 et seq. of the 1976 Code of Laws, which was substantially amended by Act 247 of 2010. The repeals are required as existing regulations 121-10 and 121-12 were developed before Sections 49-4-10 was amended by Act 247 and they are no longer consistent with existing law.

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The proposed new regulation will standardize procedures, enabling the safe and sustainable development of surface water resources, and provide for measures to prevent or mitigate unreasonable adverse effects on surface water users or surface water uses throughout the state.

DETERMINATION OF COSTS AND BENEFITS:

The regulatory program will be fee funded. No additional cost will be incurred by the State or its political subdivisions by implementation of the proposed regulation. No additional state funding is being requested.

The fees charged under this regulation are consistent with Section 48-2-50(H) as amended by the legislature. The fees collected must be returned to the Department for the purposes of implementing the Surface Water Permitting regulatory program including permit application review, compliance inspections, and enforcement; and for providing technical assistance and monitoring. The fee(s) shall be as follows:

(a) Existing surface water withdrawal permit-application processing fee \$1,000; (b) New surface water withdrawal permit-application processing fee \$7,500; (c) Modification of surface water withdrawal permit-application processing fee \$2,000; (d) Renewal of surface water withdrawal permit with modifications-application processing fee \$1,000; (e) Surface water withdrawal annual operating fee per permitted intake \$1,000.

However, Act 247 of 2010 states that fees established by the Act are repealed effective January 1, 2013. Further, no new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule.

UNCERTAINTIES OF ESTIMATES:

Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Implementation of the proposed regulation will promote protection of the environment and public health by helping to ensure that safe, sustainable quantities of surface water are available to current and future surface water users. Implementation of the proposed regulation will emphasize reasonable use of the resource and develop conservation practices to provide and maintain conditions that are conducive to the long-term development and use of surface water resources.

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

Failure to implement the proposed regulation may allow large volume surface water users to withdraw excessive quantities of water, without regard to reasonableness of need or use, effectively reducing a surface water source's capability to provide water for all competing uses. This effect would be inconsistent with the requirements of Sections 49-4-10 et seq. of the 1976 Code of Laws.

Statement of Rationale:

The statement of rationale was determined by staff analysis pursuant to S.C. Code Ann. Section 1-23-110(A)(3)(h).

The proposed new regulation will implement the provisions of Act 247. Act 247 of 2010 substantially amended Sections 49-4-10 et seq. of the 1976 Code of Laws, renaming these sections as the South Carolina Surface Water Withdrawal, Permitting, Use and Reporting Act. This new regulation will establish a system and rules for permitting the withdrawal and use of surface water from within the State of South Carolina and

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those surface waters shared with adjacent states as specified in the Act. Regulations 121-10 and 121-12 are being repealed to comply with new language of Section 49-4-10.

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.