

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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of the
GENERAL ASSEMBLY

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This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

SOUTH CAROLINA STATE REGISTER

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

STYLE AND FORMAT

Documents are arranged within each issue of the *State Register* according to the type of document filed:

Notices are documents considered by the agency to have general public interest.

Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

Proposed Regulations are those regulations pending permanent adoption by an agency.

Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.

Final Regulations have been permanently adopted by the agency and approved by the General Assembly.

Emergency Regulations have been adopted on an emergency basis by the agency.

Executive Orders are actions issued and taken by the Governor.

2018 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made **by 5:00 P.M.** on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/12	2/9	3/9	4/13	5/11	6/8	7/13	8/10	9/14	10/12	11/9	12/14
Publishing Date	1/26	2/23	3/23	4/27	5/25	6/22	7/27	8/24	9/28	10/26	11/23	12/28

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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In order by General Assembly review expiration date
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 South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4735	SR42-2		Chapter Revisions	1/15/18	Workers' Compensation Commission
4678	SR42-2		Investigation Procedures	1/18/18	South Carolina Human Affairs Commission
4665	SR42-2		Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities	1/19/18	Department of Revenue
4729			Determination of Rates of Tuition and Fees	2/13/18	Commission on Higher Education
4746			Articles 4, 5, 7 and 8 of Chapter 126	5/02/18	Department of Health and Human Services
4740			Minimum Standards for Licensing Hospitals and Institutional General Infirmaries	5/09/18	Department of Health and Envir Control
4732			Method of Operations; Application of Federal Truth in Lending Act; Other Cases - Summary Procedure; Delinquent Notification Filing and Fee Payment; and Filing and Posting Maximum Rate Schedules	5/09/18	Department of Consumer Affairs
4771			Wilderness Therapeutic Camps for Children	5/09/18	Department of Social Services
4758			Investigation and Production of Evidence	5/09/18	South Carolina Human Affairs Commission
4757			Complaint	5/09/18	South Carolina Human Affairs Commission
4759			Investigation Procedures	5/09/18	South Carolina Human Affairs Commission
4775			South Carolina Anti-Money Laundering Act	5/09/18	Office of the Attorney General
4760			South Carolina Stroke Care System	5/09/18	Department of Health and Envir Control
4754			Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	5/09/18	State Board of Education
4755			Operation of Public Pupil Transportation Services	5/09/18	State Board of Education
4752			Employability Credential for Students with Disabilities	5/09/18	State Board of Education
4786			Free Textbooks	5/09/18	State Board of Education
4785			Disposition of Instructional Materials Samples after State Adoption Process	5/09/18	State Board of Education
4787			Textbook Adoption Regulation	5/09/18	State Board of Education
4783			Defined Program 6-8	5/09/18	State Board of Education
4788			Credential Classification	5/09/18	State Board of Education
4789			Application for Teaching Credential	5/09/18	State Board of Education
4790			Certification Requirements; approval of alternative certification; authorization for the SBE to approve additional alternative certification programs	5/09/18	State Board of Education
4782			Defined Program, Grades 9-12 and Graduation Requirements	5/09/18	State Board of Education
4781			Transfers and Withdrawals	5/09/18	State Board of Education
4764			Auctioneers' Commission (Late Fees)	5/09/18	LLR
4777			Residential Specialty Contractors License	5/09/18	LLR-Residential Builders Commission
4778			Classification of Residential Specialty Contractors	5/09/18	LLR-Residential Builders Commission
4793			Fee Schedules	5/09/18	LLR-Office of Elevators and Amusement Rides
4776			Real Estate Commission	5/09/18	LLR
4794			Fee Schedule	5/09/18	LLR-Office of Elevators and Amusement Rides
4796			Mechanical Contractors-Air conditioning, Heating and Packaged Equipment	5/09/18	LLR-Contractor's Licensing Board
4768			Definitions	5/09/18	LLR-Perpetual Care Cemetery Board
4779			Nurse Licensure Compact	5/09/18	LLR-Board of Nursing
4798			License Renewal	5/09/18	LLR-Manufactured Housing Board
4770			Audit Program	5/09/18	LLR-Office of Immigrant Worker Compliance
4769			Licensure Fees	5/09/18	LLR-Board of Registration for Foresters
4765			Auctioneers' Commission (Exam Fee)	5/09/18	LLR-
4761			Board of Registration for Professional Engineers and Surveyors	5/09/18	LLR
4767			Barber Students, Applications, Permits, Training, Progress Reports, and Examinations	5/09/18	LLR-Board of Barber Examiners
4766			Real Estate Appraisers Board	5/09/18	LLR-Real Estate Appraisers Board
4795			Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists and Psycho-Educational Specialists	5/09/18	LLR-Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists and Psycho-Educational Specialists
4763			Real Estate Appraisers Board	5/09/18	LLR
4801			Board of Examiners in Speech-Language Pathology and Audiology	5/09/18	LLR

2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

4802	Recording and Reporting Occupational Injuries and Illnesses	5/09/18	LLR-OSHA
4799	Seasons, Limits, Methods of Take and Special Use Restrictions on Wildlife Management Areas	5/09/18	Department of Natural Resources
4803	Adjustment of Claims Under Unusual Circumstances	5/09/18	Department of Insurance
4792	Credit for Reinsurance	5/09/18	Department of Insurance
4747	Regulations for the Licensing of Child Care Centers	1/23/19	Department of Social Services
4807	Benghal Dayflower Quarantine; and Emerald Ash Borer Quarantine	2/05/19	Clemson University-State Crop Pest Comm

COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 3

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

DOC. No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
4735	Chapter Revisions	Regulations and Admin. Procedures	Judiciary
4678	Investigation Procedures	Regulations and Admin. Procedures	Judiciary
4665	Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities	Regulations and Admin. Procedures	Finance
4729	Determination of Rates of Tuition and Fees	Regulations and Admin. Procedures	Education
4746	Articles 4, 5, 7 and 8 of Chapter 126	Regulations and Admin. Procedures	Medical Affairs
4740	Minimum Standards for Licensing Hospitals and Institutional General Infirmaries	Regulations and Admin. Procedures	Medical Affairs
4732	Method of Operations; Application of Federal Truth in Lending Act; Other Cases - Summary Procedure; Delinquent Notification Filing and Fee Payment; and Filing and Posting Maximum Rate Schedules	Regulations and Admin. Procedures	Banking and Insurance
4771	Wilderness Therapeutic Camps for Children	Regulations and Admin. Procedures	General
4758	Investigation and Production of Evidence	Regulations and Admin. Procedures	Judiciary
4757	Complaint	Regulations and Admin. Procedures	Judiciary
4759	Investigation Procedures	Regulations and Admin. Procedures	Judiciary
4775	South Carolina Anti-Money Laundering Act	Regulations and Admin. Procedures	Banking and Insurance
4760	South Carolina Stroke Care System	Regulations and Admin. Procedures	Medical Affairs
4754	Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	Regulations and Admin. Procedures	Education
4755	Operation of Public Pupil Transportation Services	Regulations and Admin. Procedures	Education
4752	Employability Credential for Students with Disabilities	Regulations and Admin. Procedures	Education
4786	Free Textbooks	Regulations and Admin. Procedures	Education
4785	Disposition of Instructional Materials Samples after State Adoption Process	Regulations and Admin. Procedures	Education
4787	Textbook Adoption Regulation	Regulations and Admin. Procedures	Education
4783	Defined Program 6-8	Regulations and Admin. Procedures	Education
4788	Credential Classification	Regulations and Admin. Procedures	Education
4789	Application for Teaching Credential	Regulations and Admin. Procedures	Education
4790	Certification Requirements; approval of alternative certification; authorization for the SBE to approve additional alternative certification programs	Regulations and Admin. Procedures	Education
4782	Defined Program, Grades 9-12 and Graduation Requirements	Regulations and Admin. Procedures	Education
4781	Transfers and Withdrawals	Regulations and Admin. Procedures	Education
4764	Auctioneers' Commission (Late Fees)	Regulations and Admin. Procedures	Labor, Commerce and Industry
4777	Residential Specialty Contractors License	Regulations and Admin. Procedures	Labor, Commerce and Industry
4778	Classification of Residential Specialty Contractors	Regulations and Admin. Procedures	Labor, Commerce and Industry
4793	Fee Schedules	Regulations and Admin. Procedures	Labor, Commerce and Industry
4776	Real Estate Commission	Regulations and Admin. Procedures	Labor, Commerce and Industry
4794	Fee Schedule	Regulations and Admin. Procedures	Labor, Commerce and Industry
4796	Mechanical Contractors-Air conditioning, Heating and Packaged Equipment	Regulations and Admin. Procedures	Labor, Commerce and Industry
4768	Definitions	Regulations and Admin. Procedures	Labor, Commerce and Industry
4779	Nurse Licensure Compact	Regulations and Admin. Procedures	Medical Affairs
4798	License Renewal	Regulations and Admin. Procedures	Labor, Commerce and Industry
4770	Audit Program	Regulations and Admin. Procedures	Labor, Commerce and Industry
4769	Licensure Fees	Regulations and Admin. Procedures	Fish, Game and Forestry
4765	Auctioneers' Commission (Exam Fee)	Regulations and Admin. Procedures	Labor, Commerce and Industry
4761	Board of Registration for Professional Engineers and Surveyors	Regulations and Admin. Procedures	Labor, Commerce and Industry
4767	Barber Students, Applications, Permits, Training, Progress Reports, and Examinations	Regulations and Admin. Procedures	Labor, Commerce and Industry
4766	Real Estate Appraisers Board	Regulations and Admin. Procedures	Labor, Commerce and Industry
4795	Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists and Psycho-Educational Specialists	Regulations and Admin. Procedures	Labor, Commerce and Industry
4763	Real Estate Appraisers Board	Regulations and Admin. Procedures	Labor, Commerce and Industry
4801	Board of Examiners in Speech-Language Pathology and Audiology	Regulations and Admin. Procedures	Medical Affairs
4802	Recording and Reporting Occupational Injuries and Illnesses	Regulations and Admin. Procedures	Labor, Commerce and Industry
4799	Seasons, Limits, Methods of Take and Special Use Restrictions on Wildlife Management Areas	Regulations and Admin. Procedures	Fish, Game and Forestry
4803	Adjustment of Claims Under Unusual Circumstances	Regulations and Admin. Procedures	Banking and Insurance
4792	Credit for Reinsurance	Regulations and Admin. Procedures	Banking and Insurance
4747	Regulations for the Licensing of Child Care Centers	Regulations and Admin. Procedures	General
4807	Benghal Dayflower Quarantine; and Emerald Ash Borer Quarantine	Regulations and Admin. Procedures	Agriculture and Natural Resources

4 EXECUTIVE ORDERS

Executive Order No. 2017-45

WHEREAS, the Governor of North Carolina has declared that an emergency exists in the State of North Carolina due to the effects of prolonged cold weather in North Carolina and other parts of the United States, causing a high demand for fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments; and

WHEREAS, the Governor of North Carolina has suspended federal regulations limiting the hours operators of commercial motor vehicles may drive pursuant to the Federal Motor Carrier Safety regulations, 49 CFR § 390, et seq.; and

WHEREAS, whenever a declaration of emergency is declared in North Carolina that triggers relief under 49 CFR § 390.23, an emergency must be declared in this State pursuant to Section 56-5-70(B) of the South Carolina Code of Laws; and

WHEREAS, South Carolina is forecasted to have the coldest weather in over two years; and there is an increase demand for fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments; and

WHEREAS, I have already received reports indicating wait times of up to 6 hours at terminals; and

WHEREAS, the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas is essential to the public during the wintertime, and any interruption in delivery poses serious risks to the health, welfare, and economic well-being of South Carolina citizens who depend on fuel.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby determine that an emergency exists in the State of South Carolina pursuant to Section 56-5-70(B) of the South Carolina Code of Laws. I hereby suspend of Part 395 (drivers' hours of service) of Title 49 of the Code of Federal Regulations. I further direct the South Carolina Department of Transportation and the South Carolina Department of Public Safety, and the State Transport Police as needed, to suspend the federal rules and regulations that limit the hours operators of commercial vehicles may drive, in order to ensure the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas needing to be moved on the highways of North Carolina and South Carolina to ensure the demand is met in both States.

Nothing herein shall be construed as an exemption from the Commercial Driver's License requirements in 49 C.F.R. § 383 or the financial requirements in 49 C.F.R. § 387.

This Order shall take effect immediately and shall expire in 30 days at 11:59 p.m. on January 28, 2018, as currently set forth in the emergency declaration in the State of North Carolina.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 29th DAY OF DECEMBER, 2017.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-01

WHEREAS, on December 8, 2017, the National Weather Service issued a winter weather advisory for portions of the Upstate region of South Carolina—including Oconee, Spartanburg, Anderson, and Pickens Counties—due to hazardous weather conditions caused by a mixture of rain, freezing rain, and snow; and

WHEREAS, as a result of the foregoing hazardous weather conditions, on December 8, 2017, state government offices in Oconee, Spartanburg, Anderson, and Pickens Counties dismissed early to ensure the safety of state employees and the general public; and

WHEREAS, pursuant to section 8-11-57 of the South Carolina Code of Laws, the undersigned may authorize leave with pay for affected state employees who are absent from work due to the closure of state offices for hazardous weather conditions.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby authorize leave with pay for affected state employees who were absent from work as directed on December 8, 2017, as a result of the foregoing hazardous weather conditions. This Order is effective immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 17th DAY OF JANUARY, 2018.

HENRY MCMASTER
Governor

Executive Order No. 2018-02

WHEREAS, the first week of 2018 represented one of the coldest weather periods on record for the State of South Carolina and presented various hazardous weather conditions; and

WHEREAS, the National Weather Service issued winter storm warnings and winter weather advisories for large portions of South Carolina in connection with a severe winter storm that began on January 3, 2018, and produced a combination of snow, sleet, and freezing rain and resulted in significant accumulations of snow and ice and other hazardous weather conditions; and

WHEREAS, as a result of the foregoing hazardous weather conditions, on January 3, 4, 5, and 8, state government offices in the following counties opened on a delayed schedule, dismissed early, or closed to ensure the safety of state employees and the general public:

1. January 3, 2018:

Delayed: Fairfield.

Closed: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton, Jasper, and Orangeburg.

Early Dismissal: Allendale, Bamberg, Barnwell, Calhoun, Clarendon, Darlington, Dillon, Fairfield, Florence, Georgetown, Horry, Kershaw, Lancaster, Lee, Marion, Marlboro, Richland, Sumter, and Williamsburg.

2. January 4, 2018:

Delayed: Bamberg, Barnwell, and Chesterfield.

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Closed: Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Marlboro, Orangeburg, Sumter, and Williamsburg.

3. January 5, 2018:

Delayed: Beaufort, Colleton, Darlington, Dillon, Georgetown, Hampton, Horry, Jasper, Marion, Marlboro, and Orangeburg.

Closed: Berkeley, Charleston, Clarendon, Dorchester, Florence, Lee, Sumter, and Williamsburg.

4. January 8, 2018:

Delayed: Pickens, Spartanburg, and Williamsburg.

WHEREAS, pursuant to section 8-11-57 of the South Carolina Code of Laws, the undersigned may authorize leave with pay for affected state employees who are absent from work due to the closure of state offices for hazardous weather conditions.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby authorize leave with pay for affected state employees who were absent from work as directed on January 3, 4, 5, and 8, 2018, as a result of the foregoing hazardous weather conditions. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 17th DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-03

WHEREAS, the first week of 2018 represented one of the coldest weather periods on record for the State of South Carolina and presented various hazardous weather conditions; and

WHEREAS, the National Weather Service issued winter storm warnings and winter weather advisories for large portions of South Carolina in connection with a severe winter storm that began on January 3, 2018, and produced a combination of snow, sleet, and freezing rain and resulted in significant accumulations of snow and ice and other hazardous weather conditions; and

WHEREAS, as a result of the foregoing hazardous weather conditions, it became necessary for many banks and savings and loan institutions in this State to close or remain closed from January 3, 2018, through January 4, 2018, or to otherwise cease transacting business on one or more such days; and

WHEREAS, section 53-5-55 of the South Carolina Code of Laws, as amended, authorizes the Governor to declare additional legal holidays for banks and savings and loan institutions whenever the Governor finds such additional holiday or holidays to be necessary or appropriate; and

WHEREAS, as Governor of the State of South Carolina, I am mindful of the duties and responsibilities vested in me by the Constitution and Laws of this State and have carefully considered the foregoing circumstances.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that January 3, 2018, and January 4, 2018, shall be legal holidays for banks and savings and loan

institutions in the State of South Carolina that were forced to close or remain closed from January 3, 2018, through January 4, 2018, or to otherwise cease transacting business on one or more such days, due to the foregoing hazardous weather conditions. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 17th DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-04

WHEREAS, the Governor of Georgia has declared that an emergency exists in the State of Georgia due to a period of severe winter weather, which has increased the demand for emergency or disaster-related materials, supplies, goods, and services (including agricultural and food products), all of which are essential needs of the public during the winter; and

WHEREAS, the Governor of Georgia has suspended federal regulations limiting the hours operators of commercial motor vehicles may drive vehicles transporting materials as stated above pursuant to the Federal Motor Carrier Safety regulations, 49 C.F.R. § 390 *et seq.*; and

WHEREAS, whenever a state of emergency is declared in Georgia that triggers relief under 49 C.F.R. § 390.23, an emergency must be declared in this State pursuant to section 56-5-70(B) of the South Carolina Code of Laws.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that an emergency exists in the State of South Carolina pursuant to section 56-5-70(B) of the South Carolina Code of Laws for the limited purpose of complying with the declaration of emergency in the State of Georgia. Accordingly, I hereby suspend of Part 395 (drivers' hours of service) of Title 49 of the Code of Federal Regulations. I further direct the South Carolina Department of Transportation, the South Carolina Department of Public Safety, and the State Transport Police, as needed, to suspend application and enforcement of the federal rules and regulations that limit the hours operators of commercial vehicles may drive in order to ensure the uninterrupted supply of emergency or disaster-related materials, supplies, goods, and services (including agricultural and food products), and any other items needing to be moved on the highways of the States of Georgia and South Carolina to comply with this Order. Nothing herein shall be construed as an exemption from the Commercial Driver's License requirements in 49 C.F.R. § 383 or the financial requirements in 49 C.F.R. § 387.

This Order is effective immediately and shall expire at 11:59 p.m. on Friday, February 2, 2018, in accordance with section 56-5-70(D) of the South Carolina Code of Laws. Nothing herein shall affect the waiver authorized by Executive Order 2017-45 on December 29, 2017, which suspended the federal rules and regulations that limit the hours operators of commercial vehicles may drive in order to ensure the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas needing to be moved on the highways of North Carolina and South Carolina to ensure that demand for the same is met in both States. Executive Order 2017-45 shall remain in effect through midnight on January 28, 2018, unless otherwise amended.

8 EXECUTIVE ORDERS

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 20th DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-05

WHEREAS, the Governor of North Carolina has declared that an emergency exists in the State of North Carolina due to a winter storm, which threatens the health, safety, and welfare of the people of North Carolina; and

WHEREAS, the Governor of North Carolina has identified a need to ensure the uninterrupted supply and transportation on North Carolina highways of equipment and supplies for utility restoration and debris removal, livestock and poultry and feed for livestock and poultry, and food, medicine, and essential fuels; and

WHEREAS, federal law limits the hours operators of commercial motor vehicles may drive vehicles transporting materials as stated above pursuant to 49 C.F.R. §§ 390 *et seq.* and establishes certain weight limitations for vehicles on interstate highways pursuant to 23 U.S.C. § 127; and

WHEREAS, the Governor of a State may suspend certain requirements relating to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles responding to an emergency if the Governor declares a state of emergency pursuant to 23 U.S.C. § 127, 49 C.F.R. § 390.23; and

WHEREAS, by Executive Order dated January 16, 2018, the Governor of North Carolina has done so, declaring that a state of emergency exists and suspending requirements related to registration, permitting, length, width, weight, load, and hours of service for certain commercial vehicles; and

WHEREAS, whenever a state of emergency is declared in North Carolina that triggers relief under 49 C.F.R. § 390.23, an emergency must be declared in this State pursuant to section 56-5-70(B) of the South Carolina Code of Laws.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, due to the existing emergency in the State of North Carolina, I hereby suspend the federal rules and regulations that restrict certain registration, permitting, length, width, weight, load, and hours of service requirements as fully set forth below in order to ensure the uninterrupted supply of (1) persons transporting essential fuels (fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum, and gas), food, water, medical supplies, and feed for livestock and poultry; (2) persons transporting livestock and poultry; and (3) persons operating vehicles used in the restoration of utility services. Accordingly, I direct the South Carolina Department of Transportation, the South Carolina Department of Public Safety, and the State Transport Police, as needed, to suspend application and enforcement of federal rules and regulations that restrict certain registration, permitting, length, width, weight, load, and hours of service requirements, in conjunction with S.C. Code Ann. §§ 56-5-4010 *et seq.*, which establish size, weight, and load requirements for South Carolina highways, as set forth below to comply with this Order.

IT IS FURTHER ORDERED that although the federal rules and regulations that restrict registration, permitting length, width, and load requirements are waived, drivers in South Carolina are subject to the following state requirements to ensure safety on the roads:

(a) Weight, height, length, and width for any such vehicle on roadways maintained by the State of South Carolina shall not exceed for continuous travel on all non-interstates, United States, and South Carolina designated routes maximum dimensions of 12' wide, 13'6" high and weights of 90,000 pounds.

(b) Posted bridges may not be crossed.

(c) All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall provide appropriate documentation indicating it is responding to this emergency.

(d) Any dimensions and/or weight of vehicles that exceed the above must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after regular business hours.

(e) Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversize/overweight loads operating on South Carolina roadways.

FURTHER, this emergency justifies an extension of the suspension of 49 C.F.R. Part 395 (drivers' hour of service). However, nothing herein shall be construed as an exemption from the Commercial Driver's License requirements in 49 C.F.R. § 383 or the financial requirements in 49 C.F.R. § 387.

FURTHER, the Executive Order issued by the Governor of North Carolina on January 16, 2018, provides that it shall be in effect for thirty (30) days, or until the state of emergency ceases. Accordingly, for commercial vehicles responding to the emergency declared in the State of North Carolina, this Order shall take effect immediately and shall expire when the state of emergency in the State of North Carolina is terminated or on February 16, 2018, at 11:59 p.m., whichever is less, in accordance with section 56-5-70 of the South Carolina Code of Laws.

Nothing herein shall affect the waiver authorized by Executive Order 2017-45 on December 29, 2017, that suspended the federal rules and regulations that limit the hours operators of commercial vehicles may drive in order to ensure the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas needing to be moved on the highways of North Carolina and South Carolina to ensure the demand is met in both States. Executive Order 2017-45 remains in effect through midnight on January 28, 2018, unless otherwise amended.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 20th DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-06

WHEREAS, I have been notified of the passing of Master Deputy II Michael Robert Doty of the York County Sheriff's Office, who dutifully served as a law enforcement officer in this State and died in the line of duty; and

10 EXECUTIVE ORDERS

WHEREAS, Master Deputy Doty dedicated his life to protecting and serving the people of the State of South Carolina and the residents of York County, both with the York Police Department and the York County Sheriff's Office; and

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

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby Order that all flags on state buildings be lowered to half-staff from sunup to sundown on Monday, January 22, 2018, in tribute to Master Deputy Doty, who died in the line of duty. I request that all flags over the buildings of the political subdivisions of this State similarly be flown at half-staff for this purpose. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 22nd DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-07

WHEREAS, I have been notified of the passing of Specialist Javion S. Sullivan, United States Army, who lost his life on January 8, 2018, in Anbar Province, Iraq, while dutifully serving in support of Operation Inherent Resolve; and

WHEREAS, Specialist Sullivan, a South Carolina native, dedicated his life to serving his country, fighting terrorism, and defending freedom, and his loss warrants the people of this State appropriately recognizing and honoring his distinguished service and supreme sacrifice; and

WHEREAS, section 10-1-161 of the South Carolina Code of Laws, as amended, provides that for a period before and through the day on which funeral services are conducted for members of the United States military services who were residents of South Carolina and who lost their lives in the line of duty while in combat, the flags which are flown atop the State Capitol Building must be lowered to half-staff.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby Order that the flags which are flown atop the State Capitol Building be lowered to half-staff until sundown on Friday, January 26, 2018, in tribute to Specialist Sullivan and in honor of his distinguished service and supreme sacrifice. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 25th DAY OF JANUARY, 2018.**

**HENRY MCMASTER
Governor**

Executive Order No. 2018-08

WHEREAS, inclement weather occurred on the January 17 and 18, 2018, to include snow, ice, freezing rain, and other hazardous weather conditions; and

WHEREAS, as a result of the foregoing hazardous weather conditions, state government offices in the following counties opened on a delayed schedule, dismissed early, or closed to ensure the safety of state employees and the general public:

1. January 17, 2018:

Delayed: Edgefield.

Closed: Anderson, Cherokee, Chester, Fairfield, Greenville, Lancaster, Laurens, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, and Union.

Early Dismissal: Abbeville and York.

2. January 18, 2018:

Delayed: Abbeville, Anderson, Chester, Dillon, Edgefield, Florence, Greenville, Lancaster, Laurens, Marion, Marlboro, McCormick, Newberry, Pickens, Richland, Saluda, Spartanburg, Union and York.

Closed: Cherokee

WHEREAS, pursuant to section 8-11-57 of the South Carolina Code of Laws, the undersigned may authorize leave with pay for affected state employees who are absent from work due to the closure of state offices for hazardous weather conditions.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby authorize leave with pay for affected state employees who were absent from work as directed on January 17th and 18th 2018, as a result of the foregoing hazardous weather conditions. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 5th DAY OF FEBRURY, 2018.**

**HENRY MCMASTER
Governor**

12 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

February 23, 2018

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 February 23, 2018 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 Nic Gerrald, Certificate of Need Program, 2600 Bull Street, Columbia, SC 29201 at (803) 545-3495.

Affecting Beaufort County

South of Broad Healthcare d/b/a South of Broad Hospital

Construction of a 20-bed acute care microhospital in Beaufort County at a total project cost of \$39,334,924.

Affecting Cherokee County

Well Care Home Health of the Upstate, Inc.

Establishment of a Home Health Agency in Cherokee County at a total project cost of \$29,000.

Affecting Chester County

Well Care Home Health of the Upstate, Inc.

Establishment of a Home Health Agency in Chester County at a total project cost of \$29,000.

Affecting Lancaster County

Rebound Behavioral Health, LLC d/b/a Rebound Behavioral Health

Addition of 21 inpatient psychiatric beds for a total of 45 inpatient psychiatric beds at a total project cost of \$50,000.

Well Care Home Health of the Upstate, Inc.

Establishment of a Home Health Agency in Lancaster County at a total project cost of \$29,000.

Affecting York County

Well Care Home Health of the Upstate, Inc.

Establishment of a Home Health Agency in York County at a total project cost of \$36,500.

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 February 23, 2018. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Nic Gerrald, Certificate of Need Program, 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) 545-3495.

Affecting Beaufort County

Broad River Oncology, LLC d/b/a Broad River Radiation Therapy Center

Development of a radiation therapy cancer center with a linear accelerator at a total project cost of \$12,014,596.

Affecting Charleston County**East Cooper Community Hospital, Inc. d/b/a East Cooper Medical Center**

Purchase and installation of a Global Excelsius GPS Navigation System at a total project cost of \$1,481,075.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**NOTICE OF GENERAL PUBLIC INTEREST****Notice of Cancellation and Rescheduling of Public Hearing
State Register Document No. 4809**

February 23, 2018

The Department of Health and Environmental Control published a Notice of Proposed Regulation and Opportunity for Public Comment in the State Register on January 26, 2018, identified as Document No. 4809, to propose new Regulation 61-125, Standards for Licensing Crisis Stabilization Unit Facilities. The aforementioned Notice scheduled a write-in public comment period that closes February 26, 2018, and gave notice of a public hearing scheduled before the Board of Health and Environmental Control (Board) for March 8, 2018.

Due to rescheduling of the DHEC Board meeting, the public hearing originally scheduled before the Board for March 8, 2018, has been cancelled and rescheduled for March 27, 2018. The public hearing will be held March 27, 2018, in the Board Room (3420), Third Floor, Aycock Building, at the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. Due to admittance procedures at the DHEC building, all visitors must enter through the Bull Street entrance and register at the front desk.

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 at <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>. The agenda will also provide notice of cancellation of any change to meeting times. Persons desiring to make oral comments at the public hearing are asked to limit their statements to five minutes or less and, as a courtesy, are asked to provide written copies of their presentations for the record.

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.

14 NOTICES

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 March 26, 2018 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 company has applied for certification as Underground Storage Tank Site Rehabilitation Contractor:

Class I

Summit Engineering, Laboratory & Testing, PC

Attn: Michael Zavislak
3575 Centre Circle
Fort Mill, SC 29715

REVENUE AND FISCAL AFFAIRS OFFICE BOARD OF ECONOMIC ADVISORS

NOTICE OF GENERAL PUBLIC INTEREST

We have calculated the increase in the limit on compensation for noneconomic damages on a medical malpractice claim. Pursuant to Section 15-32-220(F), the limit on civil liability for noneconomic damages on a medical malpractice claim is adjusted each fiscal year based on the increase or decrease in the ratio of the Consumer Price Index for All Urban Consumers as of December 31 of the previous calendar year. The adjustment is a cumulative index using a base year 2004. The 2004 base year was adopted to be consistent with the timing of the enacting legislation. As of December 31, 2017, the Index published by the Bureau of Labor Statistics, *Monthly Labor Review*, Table 38, "Consumer Price Index for All Urban Consumers", increased by 29.5% from a value of 190.3 in December 2004 to 246.524 in December 2017. Therefore, the limit not to exceed \$350,000 would increase to \$453,405 against a single health care provider and a health care institution for each claimant for civil liability for noneconomic damages on medical malpractice claims when final judgment is rendered. Also, the limit not to exceed \$1,050,000 would increase to \$1,360,220 for all health care providers and all health care institutions for each claimant for civil liability for noneconomic damages on medical malpractice claims. The adjusted limitations on compensation for noneconomic damages become effective upon publication in the *State Register* pursuant to Section 1-23-40(2).

REVENUE AND FISCAL AFFAIRS OFFICE BOARD OF ECONOMIC ADVISORS

NOTICE OF GENERAL PUBLIC INTEREST

We have calculated the increase in the limit on punitive damages awarded to each claimant that is entitled to an award. Pursuant to Section 15-32-530(D), the limit on punitive damage awards is adjusted each calendar year based on the increase or decrease in the ratio of the Consumer Price Index for All Urban Consumers as of December 31 of the previous calendar year. The adjustment is a cumulative index using a base year 2010. The

2010 base year was adopted to be consistent with the timing of the enacting legislation. As of December 31, 2016, the Index published by the Bureau of Labor Statistics, *Monthly Labor Review*, Table 38, "Consumer Price Index for All Urban Consumers", increased by 12.5% from a value of 219.179 in December 2010 to 246.524 in December 2017. Therefore, the limit not to exceed \$500,000 would increase to \$562,380 to each claimant entitled to a punitive damage award. The adjusted limitations on an award for punitive damages become effective upon publication in the *State Register* pursuant to Section 1-23-40(2).

**REVENUE AND FISCAL AFFAIRS OFFICE
OFFICE OF RESEARCH AND STATISTICS**

NOTICE OF GENERAL PUBLIC INTEREST

Pursuant to the South Carolina Code of Laws, Section 15-41-30(B) requires the Economic Research Section of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office to adjust each dollar amount in subsection (A), items (1) through (14), by the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the U.S. Department of Labor Statistics, for the most recent year ending immediately before January first preceding July first. We computed the change in the index as the change in the average value of the index for the period from January 1, 2017 through December 31, 2017 compared to the average value of the index for the period from January 1, 2006 through December 31, 2006. This percentage change was 22.0 percent. Each dollar amount that represents this change has been rounded to the nearest twenty-five dollars as required by law. I have enclosed a table for you that represents the changes that should be made to each dollar amount in Section 15-41-30(A)(1) through (14).

Section 15-41-30. Property Exempt from Attachment, Levy, and Sales.

Subsection	Amount Specified as of May 22, 2008	Adjusted for Inflation 1/
1	\$50,000	\$60,975
	\$100,000	\$121,950
2	\$5,000	\$6,100
3	\$4,000	\$4,875
4	\$1,000	\$1,225
5	\$5,000	\$6,100
6	\$1,500	\$1,825
7	\$5,000	\$6,100
8	Unspecified	
9	\$4,000	\$4,875
10	Unspecified	
11	Unspecified	
12	Unspecified	
13	Unspecified	
14	Unspecified	

Notes: All calculations made by the Economic Research Section of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

1/ Dollar amounts are adjusted by the change in the Southeastern Consumer Price Index, All Urban Consumers, for the most recent year ending immediately before January first preceding July first, and rounded to the nearest twenty-five dollars (Section 15-41-30 (B)).

Sources: U.S. Department of Labor, Bureau of Labor Statistics; Legislative Printing and Information Technology Systems (Act 225 of 2007, H.B.3816).

16 PROPOSED REGULATIONS

Document No. 4810

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 30

Statutory Authority: 1976 Code Sections 44-1-60, 48-39-50, and 48-39-280(E)

30-14. Administrative Procedures.

Preamble:

The Department of Health and Environmental Control (“Department”) proposes amending R.30-14, Administrative Procedures with respect to the review process for revising jurisdictional lines and erosion rates affecting beachfront properties. 1976 Code Section 48-39-280 requires the Department to establish and review the position of beachfront jurisdictional setback lines, baselines, and erosion rates once every seven (7) to ten (10) years. Existing Coastal Division Regulation 30-14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This proposed regulatory amendment would clarify the review process to allow sufficient time for affected landowners to understand the Department’s methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department’s Office of Ocean and Coastal Resource Management for a staff determination. The amendment would provide landowners a timely review and would comply with Act No. 387 of 2006.

The Department published proposed revisions to the state’s beachfront jurisdictional setback lines, baselines and erosion rates on October 6, 2017. Based on comments received from landowners, community leaders, the conservation community and others during the initial 30-day public comment period, the Department extended the public comment period until April 6, 2018. Existing jurisdictional lines will remain in place until final revised lines are adopted.

The Department had a Notice of Drafting for the proposed amendment published in the November 24, 2017, *State Register*.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this promulgation.

Section-by-Section Discussion of Proposed Amendments

R.30-14.F(1)

Language is amended to clarify the process for affected landowners to request a determination from the Department on whether revisions to the state’s beachfront setback line, baseline, or erosion rate is adopted in error.

R.30-14.F(1)(a)

Language is amended to clarify the criteria for requesting a determination from the Department on whether revisions to the state’s beachfront setback line, baseline, or erosion rate is adopted in error.

R.30-14.F(1)(b)

Language is amended to clarify how the Department proceeds if substantiating evidence supports that the revisions were adopted in error.

R.30-14.F(1)(c)

Language is amended to clarify how the Department proceeds if substantiating evidence does not support that the revisions were adopted in error.

R.30-14.F(2)

Language is amended to clarify that the appeals process of Department determinations is governed by Section 44-1-60.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comments on the proposed amendment in writing to Elizabeth von Kolnitz by mail at Bureau of Ocean and Coastal Resource Management, South Carolina Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C. 29405; by fax at (843) 953-0260; or by email at Elizabeth.Vonkolnitz@dhec.sc.gov. To be considered, the Department must receive the comment(s) no later than 5:00 p.m. on March 26, 2018, the close of the public comment period.

Interested persons may also make oral and/or submit written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its meeting on March 27, 2018. The meeting will commence at 10:00 a.m. in the Board Room, Third floor, Aycock Building of the Department of Health and Environmental Control; 2600 Bull Street; Columbia, S.C. 29201. The order of presentation for public hearings will appear in the Board’s agenda published by the Department twenty-four (24) hours in advance of the meeting at the following address: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>. Persons desiring to make comments at the public hearing are asked to limit their statements to five (5) minutes or less and, as a courtesy, may provide written copies of their presentations 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.

The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of the proposed amendment, a link to this Notice of Proposed Regulation, and applicable contact information. Interested persons may also obtain a copy of the proposed amendment by contacting Elizabeth von Kolnitz at the above mailing address or email.

Preliminary Fiscal Impact Statement:

The Department estimates no additional cost incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment; therefore, the Department has requested no additional state funding. The Department used existing staff and resources in preparation of this amendment and will further utilize existing staff in the regulatory administration resulting from the amendments.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.30-14, Administrative Procedures.

Purpose: 1976 Code Section 48-39-280 requires the Department to establish and review the position of jurisdictional setback lines, baselines, and erosions rates of beachfront jurisdiction once every seven (7) to ten (10) years. Existing Coastal Division Regulation 30-14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This proposed amendment of R.30-14.F would clarify the review process to allow sufficient time for affected landowners to understand the Department’s methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department’s Office of Ocean and Coastal Resource Management for staff determination. The amendment would provide landowners a timely review and would comply with Act No. 387 of 2006.

Legal Authority: 1976 Code Sections 44-1-60, 48-39-50, and 48-39-280(E).

18 PROPOSED REGULATIONS

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

These amendments are based on public comments received from landowners, community leaders, the conservation community, and others during the public comment period for the revision of the state's beachfront jurisdictional lines. Existing Coastal Division Regulation 30-14.F provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. The proposed amendment of 30-14.F allows sufficient time for affected landowners to become familiarized with the Department's methodology in setting the jurisdictional lines, and bring any substantiating evidence to the attention of the Department's Coastal Division for a staff determination. These amendments would provide landowners a timely review and would comply with Act No. 387 of 2006.

The amendment is reasonable and necessary to manage the long-term health and sustainability of the state's beaches and beach/dune systems while providing sufficient public input into Department decisions. The proposed amendment clarifies existing regulations to better enable Department staff to more effectively implement the stated policies of the South Carolina Beachfront Management Act (1976 Code Section 48-39-260).

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of this proposed amendment. Benefits to the state would include improved management of coastal resources through increased clarity of the regulations while affording affected parties appropriate timely input into Department decisions. The Department does not anticipate additional cost to the regulated community as a result of this proposed amendment.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Implementation of the proposed amendment seeks to benefit the environment by providing more clarity to the Department's Coastal Division statutory directives to manage the state's beaches and beach/dune critical areas for its citizens. The amendment would better enable Department staff to manage the state's beaches and beach/dune system and provide a more effective response to those seeking to utilize these resources.

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

There is no anticipated detrimental effect on the environment and/or public health associated with these amendments.

Statement of Rationale:

1976 Code Section 48-39-280 requires the Department to establish and review the position of jurisdictional setback lines, baselines, and erosion rates of beachfront jurisdiction once every seven (7) to ten (10) years. Existing Coastal Division Regulation 30-14 provides that a landowner may request a review of the jurisdictional lines or erosion rate affecting his or her property within one (1) year of adoption. However, statutory changes under Act No. 387 of 2006 limit the review of a Department decision to fifteen (15) calendar days. This proposed amendment of R.30-14 would clarify the review process to allow sufficient time for affected landowners to understand the Department's methodology in setting jurisdictional lines and erosion rates, and bring any substantiating evidence to the attention of the Department's Office of Ocean and Coastal Resource Management for staff determination. The amendment would provide landowners a timely review and would comply with Act No. 387 of 2006.

Text:

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

20 FINAL REGULATIONS

Document No. 4791
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 13-7-40

61-63. Radioactive Materials (Title A).

Synopsis:

The federal Atomic Energy Act of 1954 enables the United States Nuclear Regulatory Commission (“Commission”) to enter into agreements with state governors allowing for state regulation of byproduct, source, and special nuclear materials. 42 U.S.C. Section 2121. The Commission enters into such agreements if it finds the state regulatory program complies with applicable federal regulations. *Id.* To renew South Carolina’s ongoing agreement with the Commission, the Department of Health and Environmental Control (“DHEC”) amends Regulation 61-63 for compliance with the Commission’s federal regulatory updates. The amendments add clarification or corrections to Parts II, V, VII, and XII of the regulation. Additionally, for Part II, the amendments enable specific licensees to install and service generally licensed devices. For Part XII, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, the amendments enable individuals receiving security-related information to protect it from public disclosure. These amendments comply with federal regulations 10 CFR Parts 19, 20, 30, 31, 32, 34, 37, 40, 61 and 71.

In accordance with S.C. Code Section 1-23-120(H), the amendments do not require legislative review as DHEC promulgates the amendments to comply with federal law indicated above.

The Department had a Notice of Drafting for this amendment published in the *State Register* on April 28, 2017.

Section-by-Section Discussion of Amendments:

2.3.5

Revised to add text for clarification.

2.4.2.4

Revised to add text for clarification.

2.4.2.6 through subparagraphs 2.4.2.6.3

Added to allow specific licensees to install and service generally licensed devices.

2.7.14.8.2

Revised to add text for clarification.

2.20.2.2.13

Revised to add text for clarification.

2.20.2.3

Revised to add text for clarification.

2.20.2.5.6.1

Revised to add text for clarification.

2.22.1

Revised to delete reference and add new exceptions.

3.55.1.1

Revised to change text for accuracy of information.

5.6.1

Revised to add text for clarification and add new web address.

7.32.8

Added. This provision was previously omitted during a prior revision.

12.5.2.2

Revised to change reference.

12.7.1.5

Revised to add text for clarification.

12.7.3.1

Text is removed and added to reflect correct name and email address. Web address added.

12.8.1.10

Revised to add text for clarification.

12.12.4.1

Revised to remove text.

12.23.1.1

Revised to remove and replace web address.

12.23.6

Added to require the protection of security related information.

Instructions:

Amend R.61-63 pursuant to each individual instruction provided with the text below.

Text:

61-63. Radioactive Materials (Title A).

Revise 2.3.5 as shown.

2.3.5 No person may initially transfer or distribute source material to persons generally licensed under RHA 2.3.1.1 and 2.3.1.2, or equivalent regulations of the NRC or of an Agreement State, unless authorized by a specific license issued in accordance with RHA 2.6 or equivalent provisions of the NRC or an Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by RHA 2.3.1 of this section before August 27, 2013, without specific authorization may continue for one (1) year beyond this date. Distribution may also be continued until the Department takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

Revise 2.4.2.4 as shown.

2.4.2.4 The general license in RHA 2.4.2.1 does not authorize the manufacture or import of devices containing radioactive material.

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Add 2.4.2.6 and subparagraphs 2.4.2.6.1 through 2.4.2.6.3 as shown.

2.4.2.6 Any person who holds a specific license issued by the NRC or an Agreement State authorizing the holder to manufacture, install, or service a device described in RHA 2.4.2 through 2.4.2.5 is hereby granted a general license to install and service such device and a general license to install and service such device in South Carolina, provided that:

2.4.2.6.1 [Reserved]

2.4.2.6.2 The device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to such person by the NRC or Agreement State.

2.4.2.6.3 Such person assures that any labels required to be affixed to the device under regulations of the NRC or Agreement State which licensed manufacture of the device bear a statement that removal of the label is prohibited.

Revise 2.7.14.8.2 as shown.

2.7.14.8.2 Each person licensed under RHA 2.7.14 shall report annually all transfers of devices to persons for use under a general license in an NRC or Agreement State's regulations that are equivalent to RHA 2.4.4 to the NRC or responsible Agreement State agency. The report must state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to a particular NRC licensee or Agreement State during the reporting period, this information must be reported to the NRC or responsible Agreement State agency upon request of the Department.

Revise 2.20.2.2.13 as shown.

2.20.2.2.13 Any person who desires to apply byproduct material to, or to incorporate byproduct material into, the products exempted in RHA 2.20.2.2, or who desires to initially transfer for sale or distribution such products containing byproduct material, should apply for a specific license pursuant to RHA 2.5, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to RHA 2.20.2.2.

Revise 2.20.2.3 as shown.

2.20.2.3 Gas and aerosol detectors containing byproduct material. Except for persons who manufacture, possess, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements for a license of Parts II, III, IV, V, VI, VIII, and XI in these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.26 of 10 CFR Part 32 which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a Licensing State with comparable provisions to 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under RHA 2.20.2.3, should apply for a license under 10 CFR 32.26 and for a certificate of registration in accordance with RHA 2.29.

Revise 2.20.2.5.6.1 as shown.

2.20.2.5.6.1 Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license of Parts II, III, IV, V, VI, VIII, and XI set forth in Regulation 61-63, Radioactive Materials (Title A) to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to Section 32.30 of 10 CFR Part 32, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

Revise 2.22.1 as shown.

2.22.1 The transportation of radioactive material shall be in accordance with the requirements in 10 CFR Part 71, which is incorporated by reference, with the exception of the following sections: 71.2, 71.6, 71.11, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71.85(a)-(c), 71.91(b), 71.99, 71.100, 71.101(c)(2), 71.101(g), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123 and 71.125. The provisions of this section apply to the transportation of radioactive material, or delivery of radioactive material to a carrier for transportation, regardless of whether or not the carrier is also subject to the rules and regulations of the Nuclear Regulatory Commission contained in Title 10 CFR Part 71 and other agencies of the United States having jurisdiction.

Revise 3.55.1.1 as shown.

3.55.1.1 A waste generator, collector, or processor who transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a manifest reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest [Shipping Paper]) and 541 (Uniform Low-Level Radioactive Waste Manifest [Container and Waste Description]) and, if necessary, on applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest [Manifest Index and Regional Compact Tabulation]). NRC Forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, NRC Forms 541 and 541A and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this appendix may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest. NRC Forms 540, 540A, 541, 541A, 542, and 542A, and the accompanying instructions, in hard copy, may be obtained from the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5877. This appendix includes information requirements of the Department of Transportation. Information on hazardous, medical, or other waste, required to meet Environmental Protection Agency (EPA) regulations, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the Uniform Low-Level Radioactive Waste Manifest required by this part. Licensees are not required by the Department to comply with the manifesting requirements of this part when they ship:

Revise 5.6.1 as shown.

5.6.1 Each radiographic exposure device, source assembly or sealed source, and all associated equipment must meet the requirements specified in American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136 issued January

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1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; Telephone (212) 642-4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission library, 11545 Rockville Pike, Rockville, Maryland, 20852. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202)741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the Department may find this an acceptable alternative to actual testing of the component pursuant to the referenced standard.

Add 7.32.8 as shown.

7.32.8 In addition to the other requirements of this section, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

7.32.8.1 The manifest information that must be electronically stored is:

7.32.8.1.1 That required in Part III, Appendix D, RHA 3.55 with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

7.32.8.1.2 That information required in RHA 7.32.5.

7.32.8.2 As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium, or other medium as required by the Department.

Revise 12.5.2.2 as shown.

12.5.2.2 Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every ten (10) years in accordance with RHA 12.6.3.

Revise 12.7.1.5 as shown.

12.7.1.5 Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to Category 1 or Category 2 quantities of radioactive materials, access to safeguards information, or safeguards information modified handling.

Revise 12.7.3.1 as shown.

12.7.3.1 For the purpose of complying with Subpart B, Department licensees shall submit to the U.S. Nuclear Regulatory Commission, Director Division of Facilities and Security U.S NRC 11545 Rockville Pike Rockville, MD 20852 ATTN: Criminal History Program, Mail Stop TWB-05 B32M, one completed, legible standard fingerprint card (Form FD-258, ORIMDNR0000Z), electronic fingerprint scan or, where practicable,

other fingerprint record for each individual requiring unescorted access to Category 1 or Category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>.

Revise 12.8.1.10 as shown.

12.8.1.10 Commercial vehicle drivers for road shipments of Category 1 and Category 2 quantities of radioactive material;

Revise 12.12.4.1 as shown.

12.12.4.1 Licensees authorized to possess Category 1 or Category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

Revise as 12.23.1.1 shown.

12.23.1.1 The notification must be made to the Department and to the office of each appropriate governor or governor's designee. The contact information, including telephone numbers and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Material Safety, State, Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the Department may be made by email to RAMQC_shipments@dhec.sc.gov or by fax to 803-898-0391. Notifications to the Department must be to the Director, Division of Land & Waste Management, Bureau of Waste Management, 2600 Bull Street, Columbia, SC 29201.

Add 12.23.6 as shown.

RHA 12.23.6 Protection of information. State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in RHA 12.23.2 shall protect that information against unauthorized disclosure as specified in RHA 12.12.4 of this part.

Statement of Need and Reasonableness:

The following is based on an analysis of the factors listed in 1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Amendment to R.61-63, Radioactive Materials (Title A).

Purpose: The Department of Health and Environmental Control amends Regulation 61-63 for compliance with federal regulations 10 CFR Parts 19, 20, 30, 31, 32, 34, 37, 40, 61 and 71.

Legal Authority: 1976 Code Section 13-7-40.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these amendments. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

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

The federal Atomic Energy Act of 1954 enables the United States Nuclear Regulatory Commission (“Commission”) to enter into agreements with state governors allowing for state regulation of byproduct, source, and special nuclear materials. 42 U.S.C. Section 2121. The Commission enters into such agreements if it finds the state regulatory program complies with applicable federal regulations. To renew South Carolina’s ongoing agreement with the Commission, the Department of Health and Environmental Control amends Regulation 61-63 for compliance with the Commission’s federal regulatory updates. The amendments are beneficial in that they ensure state oversight of required standards.

DETERMINATION OF COSTS AND BENEFITS:

Neither the state nor its political subdivisions will incur additional cost through implementation of these amendments. Existing staff and resources will be utilized to implement these amendments to the regulation. The amendments will not create any significant additional cost to the regulated community since requirements or changes to the regulation will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These amendments seek to ensure an effective regulatory program for radioactive material users under state jurisdiction and protection of the public and workers from unnecessary exposure to ionizing radiation.

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

None. Federal requirements will apply to all affected users. These amendments eliminate possible duplicative or redundant requirements.

Document No. 4678
SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
CHAPTER 65
Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

65-223. Investigation Procedures.

Synopsis:

Regulation 65-223 explains and refines the procedures for Agency investigations based on complaints of unlawful conduct under the Fair Housing Law.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

Instructions:

Replace Regulation 65-223 as printed below.

Text:

65-223. Investigation Procedures.

A. Investigations.

(1) Upon the filing of a complaint under 65-220, the Commission will initiate an investigation.

(2) The purposes of an investigation are:

(a) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(b) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(c) To develop factual data necessary for the Commission to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided by the Fair Housing Law.

B. Conduct of Investigation.

(1) In conducting investigations under this Rule, the Commission will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(2) The Commission and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding except that the Commission shall have the power to issue subpoenas in support of the investigation or at the request of the respondent. Subpoenas must be approved by the Legal Counsel as to their legality before issuance.

C. Cooperation of Federal, State or local agencies.

The Commission, in processing Fair Housing Law complaints, may seek the cooperation and utilize the services of Federal, State or local agencies, including any agency having regulatory or supervisory authority over financial institutions.

D. Completion of investigation.

The investigation will remain open until the reasonable cause determination is made or a conciliation agreement is executed and approved. Unless it is impracticable to do so, the Commission will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Commission reactivates the complaint, within 100 days after service of the notice of reactivation). If the Commission is unable to complete the investigation within the 100 day period, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

E. Final investigative report.

(1) At the end of each investigation under this Rule, the Commission will prepare a final investigative report. The investigative report will contain:

(a) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The Commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action under the Fair Housing Law.

(b) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.

(c) A summary description of other pertinent records.

(d) A summary of witness statements; and

(e) Answers to interrogatories.

(2) A final investigative report may be amended at any time, if additional evidence is discovered.

(3) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 65-225.F., the Commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, provided however that neither shall have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and personal identifiable information under S.C. Code 30-2-30, or those items exempt from disclosure under S.C. Code 30-

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4-30. Additionally, any records requested by a party or a non-party to an investigation under S.C. Code 30-4-30 will be assessed on a case by case basis. Following the completion of investigation, the Commission shall notify the aggrieved person and the respondent that the final investigation report is completed and will be provided upon request.

Fiscal Impact Statement:

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-223.

Statement of Rationale:

Regulation 65-223 should clarify that certain file contents may be protected from disclosure.

Document No. 4665

DEPARTMENT OF REVENUE

CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307.1, which provides examples of the application of the sales tax imposed on various charges by hotels, motels, and similar facilities to transient customers. Code Section 12-36-920(A) imposes a 7% sales tax on accommodations on the gross proceeds of rentals of rooms or lodgings provided by hotels, motels, and similar facilities; and Code Section 12-36-920(B) imposes a sales tax on certain additional guest charges.

Effective July 1, 2014, Act 172 of 2014 amended Code Section 12-36-920(B) to limit additional guest charges to room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms; and amended Code Section 12-36-920(A) to provide that separately stated optional charges on a bill to a customer for amenities, entertainment, special items in promotional tourist packages, and other guest services are exempt from the 7% sales tax on accommodations.

The purpose of this regulation proposal is to revise the provisions of SC Regulation 117-307.1 to comply with Act 172 of 2014, which limited the sales tax on additional guest charges to room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms, and to inform the public of the impact of the new legislation. Additional questions were added to address room refreshment bars, safes, and other issues. The information in the regulation is consistent with the department's position, as expressed in SC Revenue Ruling #14-5. The amendment would be effective July 1, 2014, which is the effective date of the new legislation.

Section-by-Section Discussion:

From 117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities – 1.Q. No Changes

1.A. Delete third sentence as unnecessary. No other changes.

2.Q.-5.Q. No changes.

5.A. Change second sentence for clarity. No other changes.

6.Q. No changes.

- 6.A. Change second sentence for clarity. No other changes.
- 7.Q. No changes
- 7.A. Change third sentence for clarity. No other changes.
- 8.Q. No changes.
- 8.A. Change in response to amendments made in 2014 to Code Section 12-36-920.
- 9.Q. No changes.
- 9.A. Change third sentence to improve punctuation. Change fourth and fifth sentences in response to amendments made in 2014 to Code Section 12-36-920.
- From In-room Movies - 10.Q. No changes.
- 10.A. Delete third sentence as unnecessary. No other changes.
- 11.Q.-14.Q. No changes.
- 14.A. Change first sentence to insert missing word. No other changes.
- From Linens – 16.Q. No changes.
- 16.A. First paragraph. Change first sentence for clarity. No other changes.
- Second paragraph. Change for clarity.
- Third paragraph. No changes.
- Fourth paragraph. Change second and third sentences to improve punctuation. No other changes.
- Fifth paragraph. Change second sentence to insert missing word. No other changes.
- Sixth paragraph. No changes to first and second sentences. Change third through seventh sentences in response to amendments made in 2014 to Code Section 12-36-920.
- From Seventh paragraph – 17.Q. No changes.
- 17.A. Amend third sentence and separate into two sentences for clarity. No other changes.
- 18.Q. No changes.
- 18.A. Amend second sentence for clarity. No other changes.
- From Newspapers - 19.Q. No changes.
- 19.A. Delete second sentence as unnecessary.
- 20.Q. No changes.
- 20.A. Change in response to amendments made in 2014 to Code Section 12-36-920.
- From Valet Parking - 22.Q. No changes.
- 22.A. Change in response to amendments made in 2014 to Code Section 12-36-920.
- 23.Q. No changes.
- 23.A. Delete second and third sentences as unnecessary.
- From Meeting Rooms - 26.A. No changes.
- Other Services. Change heading for specificity.
- 27.Q.-28.A. No changes.
- Add new category (Safes) with three questions and answers (29.Q.-31.A.).
- Add new category (Other Charges) with five questions and answers (32.Q.-36.A.).
- 29.Q. Renumber as 37.Q. No other changes.
- 29.A. Change Question #30 in third sentence to Question #38. No other changes.
- 30.Q. Renumber as 38.A. No other changes
- 30.A. First paragraph. No changes.
- Second paragraph. Change Question #29 in first sentence to Question #37. No other changes.
- Third paragraph. Revise second sentence. No other changes.

The Notice of Drafting was published in the *State Register* on July 22, 2016.

Instructions:

Amend SC Regulation 117-307.1, which provides examples of the application of the sales tax imposed on various charges by hotels, motels, and similar facilities to transient customers.

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Text:

117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00.

2.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.

3.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 6%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.

4.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 6% as additional guest charges. The Department in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5.Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The maid service is a service provided with the room and is, therefore, part of the room charge that is subject to the tax at 7%.

6.Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not make it a charge for a separate service. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.

7.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not make it a charge for a separate service. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%.

8.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?

A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is not subject to the sales tax. The \$50.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$50.00 is therefore not subject to the tax.

9.Q. If a rental agency charges \$800.00 per week for a condominium unit, plus a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$20.00 is therefore not subject to the tax.

In-room Movies

10.Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00.

11.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?

A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.

12.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 6%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

Meals

13.Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?

A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)

14.Q. If a hotel charges \$100.00 for a room and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)

A. The Department, in Commission Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room, and 6% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

Linens

15.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest

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charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. Based on the Department's longstanding administrative policy concerning tourist packages, the \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this longstanding administrative policy:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30, and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest-by-guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of the meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is not liable for the 6% tax on the other portion of the \$100 paid by the guest since it does not represent an additional guest charge for the service of making the golf arrangements that were not used. This amount, however, must be equal to the green fee that the hotel would have had to pay to the golf course in order for the entire charge not to be subject to the 7% tax. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the \$30 that would have been, but was not, sent to the golf course is not subject to the sales tax. As such, the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The \$30 that would have been, but was not, sent to the golf course is not subject to either the sales tax or the admissions tax.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17.Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge. However, the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36.

18.Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge.

Newspapers

19.Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

20.Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since it is not one of the services specifically listed in the statute as an "additional guest charge." The newspaper that is provided for \$2.00 is the sale of tangible personal property; however, sales of newspapers are exempt from the sales tax under Code Section 12-36-2120(8).

Note: Room service is generally considered a service provided to a guest that allows the guest to order food or drink that will be bought to the guest's room. As such, newspapers brought to a guest's room do not fall within the customary definition of room service. Therefore, the \$2 charge to the guest for the newspaper is not an additional guest charge.

Valet Parking

21.Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

22.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking is not an additional guest charge and is not taxed at 6%.

23.Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?

A. The \$15.00 charge for valet parking is not subject to the sales tax.

Meeting Rooms

24.Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

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25.Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 6%.

26.Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 6% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Room Refreshment Bar or Refrigerator

27.Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

28.Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 6% as a sale of tangible personal property under Code Section 12-36-910 and Code Section 12-36-1110. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Safes

29.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the safe in the room, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the safe is a part of the services offered and provided with the room for the \$100.00.

30.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the safe in the room, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 charge for the safe are taxed at 7%. The availability of a safe is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the safe.

31.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 if the guest uses the safe in the room, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$5.00 charge for actually using the safe is not subject to the tax. The availability of a safe is a part of the services offered and provided with the room; however, the use of the safe is over and above the services customarily provided with the room. In this case, guests expect to pay a charge for use of the safe. Therefore, the \$5.00 charge is not a part of the room charge. It is a charge for a service that is not an additional guest charge under the statute, and therefore, not subject to the tax.

Other Charges (Pet Fees, Smoking Fees, Damage Fees, and Late Check-Out Fees)

32.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for having a pet in the room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$20 charge are taxed at 7%. The pet fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for having a pet in the room; therefore, the actual charge for the room is \$120.

Note: Federal Regulation concerning Service Dogs - Under Federal Regulation 28 C.F.R. 36.302(c)(8), a place of accommodation (as defined in Federal Regulation 28 C.F.R. 36.104), such as an inn, hotel or motel, "shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets."

33.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for a room in which the guest is allowed to smoke cigarettes, cigars and other smoking tobacco, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$20 charge are taxed at 7%. The smoking room fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for a smoking room; therefore, the actual charge for the room is \$120.

34.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest smokes cigarettes, cigars and other tobacco in a non-smoking room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$35 charge are taxed at 7%. The fee for smoking in a non-smoking room is neither a charge for a service nor an additional guest charge. It is a mandatory charge for smoking in a non-smoking room; therefore, the actual charge for the room is \$135.

35.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest damages the room, what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$35 charge are taxed at 7%. The damage fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for causing damage to the room; therefore, the actual charge for the room is \$135.

36.Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$15 if a guest checks out late (past the specified time for check-out), what tax rate applies to each of the charges?

A. The \$100.00 charge and the \$15 charge are taxed at 7%. The late check-out is neither a charge for a service nor an additional guest charge. It is a mandatory charge for checking out past the specified time for check-out; therefore, the actual charge for the room is \$115.

Cancellations

37.Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #38 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

38.Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #37 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1, Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 6% for the sales tax on additional guest charges, and 6% for the sales tax on sales or rentals of tangible personal property. However, some counties and municipalities impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax, and others are collected by the county itself.

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Fiscal Impact Statement:

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

Statement of Rationale:

The purpose of this proposal is to amend the examples in SC Regulation 117-307.1 to exempt charges for (1) amenities, (2) entertainment, (3) special items in promotional tourist packages, and (4) other guest services from additional guest charges subject to sales tax in a manner consistent with changes made to Code Section 12-36-920 in 2014.

Document No. 4735
WORKERS' COMPENSATION COMMISSION
CHAPTER 67
Statutory Authority: 1976 Code Section 42-3-30

- 67-201. Application of Regulations
- 67-205. Filing with the Commission, Defined
- 67-207. Requesting a Hearing, Claimant
- 67-211. Service of Forms and Documents
- 67-213. Service of Orders, Hearing Notices, and Review Hearing Notices
- 67-214. Subpoenas
- 67-215. Motions
- 67-413. Periodic Report
- 67-504. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident
- 67-611. Pre-hearing Brief
- 67-613. Postponement or Adjournment of the Scheduled Hearing
- 67-615. Transcripts of Hearings
- 67-712. Requesting Higher Court Review
- 67-802. Settlement, Form 16, Form 16A
- 67-804. Informal Conference
- 67-1515. Confidentiality of Information
- 67-1602. Payment of Compensation
- 67-1802. Mediation Required with Certain Claims
- 67-1804. Selection of Mediator and Required Schedule
- 67-1809. Forms Required Upon Completion

Synopsis:

The South Carolina Workers' Compensation Commission proposes to amend regulations to Chapter 67 for clarification of certain regulations. The Notice of Drafting regarding this regulation was published on October 28, 2016 in the *State Register*. The language of the proposed regulations, notice of comment period and notice of public hearing was published in the *State Register* on November 25, 2016. A public hearing was held on January 5, 2017 to receive comments on the proposed regulations. Following, the Commission approved the language of the proposed regulations.

Section-by-Section Discussion

Reg. 67-201: In response to *Rhame v. Charleston Co. School Dist.*, the Commission needs to clarify that Article 2 of the Regulations applies to all levels of proceedings before the Commission.

Reg. 67-205: Clarification that the effective date of service when service is made electronically is the date it is sent and received as indicated by the parties' electronic mail service provider.

Reg. 67-207: Grammatical and typographical changes.

Reg. 67-211: Clarification that the effective date of service when service is made electronically is the date it is sent and received as indicated by the parties' electronic mail service provider.

Reg. 67-213: Clarification that the effective date of service when service is made electronically is the date it is sent and received as indicated by the parties' electronic mail service provider.

Reg. 67-214: Amend the process of a pro se litigant obtaining a subpoena to compel discovery. The amendments will provide Commission supervision of the content of the subpoenas before they are signed by a representative of the Commission on the pro se party's behalf. This will ensure an unrepresented litigant's access to meaningful discovery is preserved and reduce the use of subpoenas for abusive practices.

Reg. 67-215: In response to *Rhame v. Charleston Co. School Dist.*, the Commission needs to clarify that the Commission will not consider Motions addressing the merits, including Motions for Reconsideration of substantive issues, at any level of proceedings before the Commission.

Reg. 67-413: Eliminate the use of the Form 18 to request an informal conference by deleting subsection (A)(2) which currently reads "[file a Form 18 Status Report] to request an informal conference". Line 6 on the current Form 18 reading "Informal Conference is Requested: Yes No (check one)" will be eliminated from the Form 18. This is necessary to implement the use of the Form 18 as Second Report of Injury (SROI) through Electronic Document Interface (EDI).

Reg. 67-504: Typographical and grammatical changes.

Reg. 67-611: The changes clarify a deadline for making amendments to a Pre-Hearing Brief. They are a result of the decision in *Fore v. Griffco of Wampee*, 409 S.C. 360, 762 S.E.2d 37 (S.C. App. 2014).

Reg. 67-613: The changes eliminate provisions of the regulation that are inconsistent with the Commission's current practice in which postponements are not passed on to the next jurisdictional Commissioner.

Reg. 67-615: Amending language to direct parties to contact the Court Reporter directly for a copy of a transcript, not the Commission. This change is needed to reflect the changes made to S.C. Code Ann. Section 42-3-60 and Section 42-3-170.

Reg. 67-712: In response to *Rhame v. Charleston Co. School Dist.*, the Commission needs to clarify that a party aggrieved by a final decision on the merits of the Commission must appeal in accordance with S.C. Code Ann. Section 42-17-60 instead of filing a Motion for Reconsideration.

Reg. 67-802: Amending the process for requesting an informal conference by clarifying that the employers' representative must file a letter requesting that an informal conference be held and file a current Form 18. Line 6 on the current Form 18 reading "Informal Conference is Requested: Yes No (check one)" will be eliminated from the Form 18. This is necessary to implement the use of the Form 18 as SROI through EDI.

Reg. 67-804: Amending the process for requesting an informal conference by clarifying that the employer's representative must file a letter requesting that an informal conference be held and file a current Form 18. Line 6 on the current Form 18 reading "Informal Conference is Requested: Yes No (check one)" will be eliminated from the Form 18. This is necessary to implement the use of the Form 18 as SROI through EDI.

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Reg. 67-1515: Correction of a typographical error; removal of the word “the” from the clause “. . .the effective date of *the* such insurance program, . . .”

Reg. 67-1602: The Commission will consider adopting the amendments recommended by the Debit Card Advisory Committee.

Reg. 67-1802: The Commission will alter the listing of situations where mediation is mandatory to clarify that mandatory mediation is only triggered for claimants claiming permanent and total disability when the claimant has reached maximum medical improvement.

Reg. 67-1804: The change provides grammatical amendments and clarifies the timing in which a mediator must be selected.

Reg. 67-1809: The Commission will provide sanctions for the failure of the parties to file a Form 70 Report of Mediation in a timely manner by barring the processing of a Form 19 until the Form 70 has been received.

Instructions: Print the proposed regulations as shown below.

Text:

67-201. Application of Regulations.

A. These regulations are entitled to a liberal construction in the furtherance of the purpose for which the South Carolina Workers’ Compensation Law is intended.

B. In doubtful cases, the application of these regulations shall be construed in favor of the injured employee.

C. Unless the context otherwise requires, the regulations in this Article shall be construed to apply to all levels of proceedings before the Workers’ Compensation Commission.

67-205. Filing with the Commission, Defined.

A. The date of filing a form or document with the Commission is provided in subsections B, C, and D.

B. A form or document delivered to the Commission electronically, by first class mail, or by hand delivery is filed the date of receipt in the Commission’s offices as indicated by the earliest date stamped on the form or document by an official Commission stamp with the exception of forms and documents delivered pursuant to R.67-205C, R.67-205D, and R.67-205E.

C. A form or document delivered to the Commission by certified or registered mail is deemed filed the date of deposit in the United States Postal Service as indicated by the date of postmark.

D. A form or document transmitted to and received by the Commission electronically on or before 11:59:59 p.m. shall be considered filed with the Commission on that date, provided it is subsequently accepted after review by the appropriate department of the Commission.

E. The following forms or documents are deemed filed on the date on the accompanying certificate of service properly addressed to the Commission: Forms 50, 51, 52, 53, 54, 55, 58, 30, and appellate briefs.

67-207. Requesting a Hearing, Claimant.

A. A hearing shall be requested by filing a Form 15, Form 50 or Form 52 with the Commission’s Judicial Department as provided below:

(1) The party shall mark the box at the signature line on the Form 50 or Form 52 which states, “I am requesting a hearing or sign and date under Section III of the Form 15 “Notice to Injured Worker or Legal Representative When Temporary Compensation Has Been Stopped.”

(2) The form shall be addressed and delivered to the Judicial Department pursuant to R.67-205.

(3) The Commission shall serve the Form 15, Form 50 or Form 52 on the employer pursuant to R.67-210 and R.67-211.

(4) When under the laws of this State the employer and its insurance carrier, if any, are required by law to be represented by an attorney in a contested case hearing, an attorney shall be designated according to R.67-603.

(5) The WCC file number or Coverage Coding Form must be included.

B. When a party files a Form 50 or Form 52 with the Commission requesting a hearing, the Form 50 also serves to file the claim if a claim has not been filed before.

67-211. Service of Forms and Documents.

A. Claimant's Request for Hearing.

(1) When the claimant is represented by an attorney, the attorney shall serve a copy of the Form 50 or Form 52 hearing request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties pursuant to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the form is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented by an attorney, the claimant may serve the Form 50 or Form 52 hearing request as set forth in A(1) . When the claimant does not serve the hearing request, the Commission must serve the request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210.

B. Employer's Representative's Request for Hearing and/or Response to a Request For Hearing.

(1) When the claimant is represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 electronically or by depositing the form in the United States Postal Service first class postage, addressed to the claimant's attorney. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the form is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete as of the date of the addressee's receipt of the form as indicated by the signed certified mail return receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

C. Other Forms and Documents.

(1) Unless otherwise specified in this Chapter, other forms and documents shall be served by the parties electronically or by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210. Service is deemed complete upon mailing or electronic transmission unless the document is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed. If the document is returned or unable to be transmitted, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

(2) When the claimant is not represented by an attorney, the claimant may serve a form or document according to C(1) . When the claimant does not serve the form or document, the Commission shall serve it by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210.

(3) Hearing notices may be served electronically pursuant to R.67-210. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage pursuant to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the sender's or recipient's electronic server indicates that the transmission was unable to be completed.

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67-213. Service of Orders, Hearing Notices, and Review Hearing Notices.

A. The Commission serves orders electronically, by certified mail, return receipt requested or by deposit in the United States Postal Service, first class postage, addressed to the parties pursuant to R.67-210.

(1) Service is made by delivering a copy of the order to an unrepresented party or to the attorney representing the party.

(2) When service is made by certified mail, the date of service is the date of the addressee's receipt indicated by the certified mail return receipt. When service is made by first class mail, five days are added to the date of mailing. Service by first class mail is deemed complete five days after the date of deposit in the United States Postal Service. Service made electronically is deemed complete five days after the date the electronic transmission is completed, unless the Commission's electronic server indicates that the transmission was unable to be completed.

B. The Commission serves hearing notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service first class postage, addressed to the parties according to R.67-210. Service is deemed complete upon mailing or electronic transmission unless the form is returned or the Commission's electronic server indicates that the transmission was unable to be completed. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage per R.67-210. The Commission may, but is not required to, serve such notices by certified mail, return receipt requested. Service by certified mail is complete upon receipt.

C. When an attorney represents a party, the party is not served. If the mailing is returned, service may be completed pursuant to R.67-211.

67-214. Subpoenas.

A. A party may subpoena a person or document(s), by completing and serving a Form 27 as set forth in this section.

B. When the party issuing the Form 27 is represented by an attorney, the attorney shall complete and sign the Form 27.

C. A party not represented by an attorney may obtain a Form 27 Subpoena signed by an authorized representative of the Commission by (1) completing but not signing the Form 27, and (2) submitting the unsigned Form 27 to the Commission's Judicial Department to be signed by an authorized representative of the Commission.

D. When the person being served is represented by an attorney, the Form 27 shall be served by depositing the Form 27 in the United States Postal Service, first class postage addressed to the attorney. Service is deemed complete upon mailing, unless the form is returned. If the form is returned, service may be completed pursuant to South Carolina Rules of Civil Procedure.

E. When the person being served is not represented by an attorney, the Form 27 shall be served on the person by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete on the date of the addressee's receipt of the form as indicated by the signed certified receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. A party is not required to copy the Commission when serving a Form 27 in accordance with subsections D. and E. When the Form 27 is to be used at a hearing, the person sending the Form 27 shall retain a copy and proof of service to be presented at the hearing as necessary.

G. The signature of an attorney on a Form 27, or the written request to the Commission for the execution of a Form 27 by an unrepresented party, constitutes a certification by the attorney or party that he or she has read the Form 27; that to the best of his or her knowledge, information, and belief there is good ground(s) to support it; that it is not being presented for any improper purpose such as to harass, cause unnecessary delay, or increase the cost of litigation; and that it is only seeking information relevant to a party's claim or defense, or to a party's right to compensation from a third party.

H. A person may contest a Form 27 by filing and serving a motion to quash or modify pursuant to R.67-215.

67-215. Motions.

A. This regulation governs motions practice at all levels of proceedings before the Commission. A party may file a motion when a form is not applicable. The Commission will accept motions including, but not limited to, a motion

- (1) Relating to a subpoena or discovery;
- (2) Relating to the appointment of a Guardian ad Litem;
- (3) Relating to an attorney's appearance, withdrawal, or fee;
- (4) Relating to a claim pending Commission review;
- (5) Relating to postponing or adjourning a hearing;
- (6) Relating to self-insurance privileges;
- (7) Relating to penalties and or interest;
- (8) Relating to third party practice.

B. The Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion for

- (1) dismissal; or
- (2) summary judgment.

The single Commissioner or Full Commission may entertain motions to reconsider an order, opinion, or award if the purpose of the motion is not an attempt to reargue the merits of the dispute. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served, and shall not be made if any party already has filed an appeal of the order, opinion, or award. If a motion for reconsideration is properly filed consistent with the provisions of this subsection, the order, opinion, or award under reconsideration is not considered final until the motion for reconsideration has been disposed of by the single Commissioner or Full Commission.

C. The Commission does not provide a form for a motion. A motion shall contain a complete caption of the case including the title of the action, the state and county in which the injury occurred, the Commission's name, the workers' compensation file number, and a designation of the relief or order sought.

D. The body of the motion shall contain numbered paragraphs each limited to a statement of a single set of circumstances. The final paragraph of the motion shall state specifically the relief or order sought.

(1) If the grounds on which the motion or reply depend is based on the existence of facts not in the Commission's file, the moving party shall file an affidavit or affidavits evidencing those facts. The opposing party may file an affidavit or affidavits in reply.

(2) If the motion or reply depends on the existence of facts in evidence or are admitted in forms on file with the Commission, the party shall cite the document and page number.

E. When the claimant or an uninsured employer is not represented by an attorney, the moving party shall serve the motion by personal service or by certified mail, return receipt requested, delivery restricted to the addressee.

(1) When service is by certified mail, service is complete the date of the addressee's receipt of the mailing as indicated by the signed certified return receipt. Otherwise, the moving party shall serve the motion by any of the methods listed or by depositing the motion in the United States Postal Service, first class postage, addressed to the appropriate party.

(2) If the mailing is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. The moving party shall file the motion and proof of service with the Judicial Department, and may attach a memorandum in support of the motion. The opposing party may file a memorandum in reply within ten days of service of the motion. The parties may agree to an extension by filing a written consent. Failure to respond is deemed a general denial. No further memoranda are allowed, unless requested by a Commissioner or the Commission.

G. The jurisdictional commissioner or Full Commission, if an appeal is pending, may consider the motion after the opposing party has had ten days' notice of the motion, and shall grant or deny the relief requested.

(1) The jurisdictional commissioner may hear the motion in any county or by telephone conference call; however, a hearing is not required.

(2) The jurisdictional commissioner shall issue a written decision to be filed with the record and served on all parties.

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H. All motions filed by a party represented by an attorney shall contain an affirmation that prior to filing the motion, the movant's counsel communicated, verbally or in writing, with opposing counsel and attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation (1) would serve no useful purpose or (2) could not be timely held.

67-413. Periodic Report.

A. The employer's representative shall file a Form 18, Periodic Report, or the EDI equivalent Sub Annual (SA), as follows:

- (1) Six months after the alleged date of injury and each six months thereafter until the Commission's file is closed; and
- (2) At the request of the Commission.

67-504. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.

A. The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer received notice of the injury pursuant to Section 42-9-260. When compensation is terminated or suspended, the employer's representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department and shall serve the Form 15 immediately on the claimant pursuant to R.67-211 with documentation attached as to the reason for termination or suspension.

B. To terminate or suspend compensation pursuant to Section 42-9-260(B)(2), the employer's representative must obtain a signed Form 17.

C. The claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing Section III of the Form 15 and filing it according pursuant to R.67-207.

67-611. Pre-hearing Brief.

A. A claimant who is not represented by an attorney is not required to file a Form 58, Pre-hearing Brief.

(1) If the claimant elects to file a Form 58, the claimant must mail the Form 58 to the Commissioner's office identified on the hearing notice.

(2) The Commissioner's office shall send a copy of the Form 58 to the employer's attorney.

B. Each attorney representing a party at a hearing shall file and serve a Form 58 according to the following:

(1) The moving party must provide the Form 58 and proof of service to the opposing party at least fifteen days before a scheduled hearing. The Form 58 must be complete and set forth the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements including video recordings and/or transcribed audio recordings have been taken from any witness including the claimant, and indicate who has possession of same. A nonmoving party must provide to the moving party a response at least ten days before a scheduled hearing. The nonmoving party shall also promptly supplement a response with respect to any question directly addressed on the form and amend a response if the party obtains information upon the basis of which the party knows the response was incorrect when made, or the party knows the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) All amendments and supplements to a Form 58 must be made at least 5 days prior to the date of the scheduled hearing. Otherwise, a party seeking to supplement or amend the Form 58 must move for relief pursuant to R.67-613.

(3) Each Form 58 shall be served on the opposing party pursuant to R.67-211.

(4) All blanks on the Form 58 must be completed pursuant to R.67-204.

(5) The parties may extend the Form 58 filing deadlines required in (B)(1) and (2) by consent agreement in writing.

C. The Form 58 shall remain in the Commission's file, but does not constitute evidence or become part of the record of the hearing.

D. If an attorney fails to file and serve a Form 58, the Commissioner may postpone the hearing according to R.67-613 or assess against an attorney by written order a fine not to exceed one hundred dollars.

67-613. Postponement or Adjournment of the Scheduled Hearing.

A. Each party shall arrange and present all evidence at the hearing. Testimony of a necessary witness unable to appear at the hearing may be presented by deposition.

B. A commissioner may postpone a hearing for good cause.

(1) Good cause includes but is not limited to:

- (a) The attorney is actually engaged in another court;
- (b) Illness;
- (c) Additional discovery is necessary;
- (d) A conflict of interest exists requiring another Commissioner hear the case;
- (e) It is premature to hear the case.

(2) A party requesting a postponement shall file and serve a motion pursuant to R.67-215 at least ten days prior to the hearing. If the moving party can show emergency or other circumstance beyond its control, the motion may be filed and served as soon as reasonably possible before the hearing.

(3) If the postponement is granted upon the request of the moving party who requested a hearing set pursuant to Section 42-9-260, the requirement to hold the hearing within sixty days is waived. (4) A new hearing date shall be scheduled by the Commissioner assigned the case at the discretion of the Commissioner.

C. A party may move for adjournment at a hearing under the following circumstances:

(1) To obtain additional evidence when the evidence is in existence, identified, and necessary for the decision, but unavailable at the time of the hearing.

(2) When a witness fails to appear.

(a) If the witness has been properly subpoenaed, the moving party shall produce a copy of the Form 27 and proof of service. The Commission may allow the testimony to be made part of the record by *de bene esse* deposition or by testimony at a reconvened hearing. Nothing in this section shall prevent the moving party from withdrawing the subpoena or agreeing to an alternate means of obtaining the necessary evidence.

(b) If the witness has not been properly subpoenaed, the moving party shall provide a reasonable basis for failure to subpoena the witness. The testimony may be allowed at the Commissioner's discretion.

67-615. Transcripts of Hearings.

A. A person may, by written request to the court reporter, obtain all or a portion of a transcript of a hearing.

B. A request for a portion of a transcript shall be limited to the entire testimony of a particular witness, or the position of a party or parties.

C. The cost of a transcript is the responsibility of the party ordering the transcript.

67-712. Requesting Higher Court Review.

A. The appellant shall notify the Judicial Department of any and all subsequent appeals.

B. The prevailing party shall provide the Judicial Department with a copy of any orders issued by the courts on appeal. The prevailing party shall also notify the Commission in writing when a final order issued by the courts on appeal remits jurisdiction to the Commission.

67-802. Settlement, Form 16, Form 16A.

A. If the parties agree to the terms of a Form 16 or Form 16A, the employer's representative shall complete a Form 16 or Form 16A by recording the claimant's compensation rate; the percent of disability agreed upon disfigurement, if any; and the number of weeks of compensation the claimant will receive. The form may be approved as follows:

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(1) If the claimant is not represented by an attorney, the Form 16 or Form 16A must be approved at an informal conference.

(a) The employer's representative must request an informal conference by writing the Judicial Department requesting that an informal conference be scheduled, and filing an updated Form 18 or the EDI equivalent Sub Annual (SA) Periodic Report showing the status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. For claims arising after July 1, 2007, a Form 14B is also required. The Commission shall accept medical records containing the substantial equivalent of the information contained in the Form 14B only when the party certifies and documents that it has made a good faith effort to obtain a completed Form 14B, and the hospital or physician has unreasonably refused to complete a Form 14B. The claimant may request an informal conference by writing to the Judicial Department.

(b) If the parties at the informal conference reach an agreement which the Commissioner approves, or the claims mediator recommends, the parties shall sign the agreement. (A Commissioner must approve a claims mediator's recommendation before the settlement is recorded as binding.)

(c) If the parties do not reach an agreement of which the Commissioner approves, the Commission shall set the matter for hearing pursuant to R.67-804I.

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the employer's representative shall sign the Form 16 or Form 16A. The Form 16 or Form 16A shall then be filed with the Commission for approval without an appearance before a Commissioner, as follows:

(a) The employer's representative shall file an original and one copy of the Form 16 or Form 16A with the Commission's Claims Department. The employer's representative shall file the Form 14B, if applicable, with the Form 16A for claims arising after July 1, 2007.

(b) A Commissioner shall review the Form 16 or Form 16A and may approve the Form.

(c) If the Commissioner approves and signs the Form 16 or 16A, the Claims Department shall record the settlement and return an approved copy of the Form to the employer's representative.

(d) The employer's representative must provide the claimant a copy of the approved Form 16 or Form 16A.

(3) If the claimant is represented by an attorney, and the employer is represented by an attorney, a Form 16 or a Form 16A shall be filed with the Commission.

(a) The attorney for the employer's representative shall file an original and one copy of the Form 16 with the Commission's Claims Department. A Commissioner shall review the Form and may approve the Form.

(b) The attorney for the employer's representative shall file an original and one copy of the Form 16A with the Commission's Claims Department.

(c) The Commission's Claims Department shall review and record the settlement, and return an official copy of the Form 16 or 16A to the attorney for the employer's representative.

B. The Commissioner may schedule an informal conference to discuss the terms of the settlement when necessary.

67-804. Informal Conference.

A. Appearances at Informal Conferences.

(1) A claims mediator may appear on behalf of a Commissioner at an informal conference when the purpose of the informal conference is to:

(a) review a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid is below the threshold amount established by the Commission; or

(b) certify a Form 17.

(2) A Commissioner shall preside over an informal conference when the purpose of the informal conference is to:

(a) approve a settlement in the form of a full and final Agreement and Release made pursuant to Section 42-9-390; or

(b) approve a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid meets or exceeds the threshold amount as established by the Commission.

The Commissioner may, in the Commissioner's discretion, preside over an informal conference that does not fall under items (a) or (b).

(3) An insurance adjuster licensed by the South Carolina Department of Insurance in accordance with Chapter 47 of Title 38, South Carolina Code of Laws, may appear on behalf of an employer or insurance company at an informal conference when the purpose of the informal conference is to:

- (a) review a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid is below the threshold amount as established by the Commission; or
- (b) certify a form 17.

(4) An attorney licensed in this State or admitted in accordance with R.67-1201C shall appear on behalf of an employer or insurance company at an informal conference when the purpose of the informal conference is to:

- (a) approve a settlement in the form of a full and final Agreement and Release made pursuant to Section 42-9-390; or
- (b) approve a proposed Form 16 or Form 16A settlement when the total amount of medical benefits paid meets or exceeds the threshold amount as established by the Commission;

The Commissioner may deem it prudent for an attorney to appear at an informal conference that does not fall under subsections (a) or (b) according to the Commissioner's discretion.

B. An informal conference is defined in R.67-202(8).

C. Requesting an Informal Conference.

(1) A party requesting an informal conference shall (a) write the Commission's Judicial Department requesting that an informal conference be set, and (b) upload an updated Form 18 or the EDI equivalent Sub Annual (SA) Periodic Report showing the status of payment of temporary compensation, if any, and medical expenses.

(2) Upon receipt of a request for an informal conference the Commission shall review the Commission's file for required reports. The employer's representative must ensure that the following reports are in the Commission's file before the informal conference is held, or the employer's representative may be subject to a fine.

- (a) Form 14B, if applicable; and
- (b) Form 15, if applicable; and
- (c) Form 17, if applicable; and
- (d) Form 20, if applicable; and
- (e) All medical reports required by R.67-1301; and
- (f) An authorized health care provider's report stating the claimant has reached maximum medical improvement and an impairment rating, if any; and
- (g) An amputation chart, if applicable.

D. The claimant may request an informal conference by writing the Commission's Judicial Department and stating whether the parties propose to settle the claim on a Form 16, a Form 16A, or by Agreement and Final Release.

E. An informal conference may be held with less than thirty days' notice to the parties. The conference shall be held at a hearing site as designated by the jurisdictional commissioner. If the parties request in writing to convene the conference at a different hearing site, all parties agree, and the request is received before the hearing notice for the conference is issued, the request may be approved administratively.

F. Only a Commissioner is authorized to approve a Form 16, a Form 16A, or an Agreement and Final Release.

G. When the claimant fails to appear at an informal conference, the Commission shall reschedule the conference.

(1) If the claimant fails to appear twice, the claim shall be removed from the informal conference roster and administratively dismissed.

(2) The claimant may request the Commission to schedule another informal conference and the Commissioner assigned to the claim may, if a good cause is shown, allow the claimant to proceed with his or her claim.

H. If the employer's representative or an attorney, if any, fails to appear at the informal conference, the Commission shall reschedule the conference. The Commissioner assigned to the claim may assess against the employer's representative or an attorney, if any, the actual costs of the conference as established by the Commission.

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I. If the parties fail to reach an agreement at the informal conference, or the proposed Agreement and Final Release is not approved, the Commission shall set the claim on the contested case hearing docket. A Form 50 or Form 52 is not required, but if filed, the opposing party must respond pursuant to R.67-603.

J. Either party may request postponement of the informal conference by writing either the Commissioner whose name appears on the informal conference notice or the Judicial Department. The Commissioner may reschedule the conference during the term the Commissioner is in the district. If the Commissioner cannot reschedule the conference during his or her term in the district, the Commission must reschedule the conference, unless otherwise agreed to by the parties or ordered by the Commission.

67-1515. Confidentiality of Information.

A. Commission records and information relating to the solvency and financial condition of an employer under the authority granted by this Chapter and the Act shall not be subject to inspection; nor shall any information be directly or indirectly divulged by the Commission except by order of a Court of competent jurisdiction.

B. The Commission shall not release to the public any information concerning a self-insured or a self-insurance fund other than (1) confirmation that an employer is individually self-insured or is a member of a specific self-insurance fund, (2) the self-insured's or self-insurance fund's address, (3) the effective date of such insurance program, and (4) the name of the claims administrator.

67-1602. Payment of Compensation.

A. Unless otherwise ordered by the Commission, the employer's representative shall pay all compensation directly to (1) the claimant or (2) the guardian, if the claimant is a minor or incapacitated person, or (3) another person approved by a court to accept payment on behalf of the claimant.

B. The employer's representative shall make a check payable to the claimant and the claimant's attorney, as allowed pursuant to an approved Form 61, Attorney Fee Petition, or by order of the Commission.

C. The employer, employer's representative, or other payer shall make each payment in the form of a check, unless the parties mutually agree to an alternate payment method as provided for in this section. An employer, employer's representative, or other payer may use an electronic payment system, including, but not limited to, an electronic funds transfer, a direct deposit, debit card, or similar payment system, as an alternative method of payment if:

- (1) the claimant can immediately obtain the full amount of the periodic payment;
- (2) the method of payment is easily and readily accessible to the claimant; and
- (3) the use of an electronic payment system is optional and at the election of the parties as documented in the records of the payer; and
- (4) once the parties have agreed to use an alternate payment system in accordance with this section, either party may opt to change the method of payment to another method consistent with this section by providing 30 days' written notice to the other party.

D. When payment is made to a debit card account:

- (1) the payer shall not charge the claimant any fee related to the issuance of the debit card;
- (2) the claimant must be provided a reasonable method to obtain payment in full without incurring any usage fee; and
- (3) any other fees associated with the use of the debit card shall be disclosed to the claimant in writing by the payer.

E. Other than when making payment by check, an employer, employer's representative, or other payer shall not make a payment as described in subsection C. without the full consent of the claimant, obtained without intimidation, coercion, or fear of discharge or reprisal. Default payment shall be by check.

F. Payment made other than as directed in this section shall not acquit, protect, or discharge the employer, employer's representative, or other payer for the payment due.

G. The claimant may request a hearing to assess a penalty and/or interest for late payment by filing with the Commission's Judicial Department a motion to increase compensation payments according to R.67-215.

67-1802. Mediation Required with Certain Claims.

- A. The Commission orders that the following claims must be mediated prior to a hearing:
- (1) Claims for permanent and total disability arising under either Section 42-9-10 or Section 42-9-30(21);
 - (2) Claims arising under Chapter 11 or Chapter 13 of Title 42, South Carolina Code of Laws;
 - (3) Third-party lien reduction claims;
 - (4) Contested death claims;
 - (5) Claims for stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury, and resulting in mental illness or injury; and
 - (6) Claims involving concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act.
- B. In contested death claims, a Commissioner must make a finding that a good faith dependency investigation has been conducted and completed.
- C. Except for contested death claims, the requirement for mandatory mediation applies only to claims where compensability of the accident is admitted by the employer/carrier.
- D. Unless an unrepresented claimant requests that the claimant's case be mediated, the Commission shall not require mediation.

67-1804. Selection of Mediator and Required Schedule.

- A. The parties may consent to use any mediator who is duly qualified. The mediator must be certified as a mediator per the certification process established by the South Carolina Bar Association.
- B. The parties must select a mediator within ten days of the filing of the earliest pleading raising grounds for mediation, and must promptly notify the Commission of the mediator and proposed mediation date.
- C. The mediation must be completed within sixty days of the filing of the earliest pleading raising grounds for mediation, unless otherwise agreed to by the parties or ordered by the Commission. If the mediation is not completed within the sixty-day timeframe, the case may be set in the normal course of the docket scheduling.
- D. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator.

67-1809. Forms Required Upon Completion.

A Form 70 shall be filed by the mediator with the Judicial Department at the conclusion of the mediation. A Form 70 shall not become a part of the Commission's file, and will solely be used for tracking purposes. The Commission shall not process a Form 19 or further request for hearing until a Form 70 has been filed with the Commission.

Fiscal Impact Statement:

The fiscal impact of the proposed changes to this regulation is \$0.

Statement of Rationale:

The amendments to Chapter 67 are necessary for clarification of certain regulations; to amend the subpoena process of a pro se litigant; to facilitate the electronic submission of certain forms and documents; to eliminate the use of the Form 18 to request an informal conference; to amend language to provide instructions for requesting copies of transcripts; to correct a typographical error; to adopt amendments recommended by Debit Card Advisory Committee; and to require parties to file a Form 70 at completion of mediation.