

REGULATION DEVELOPMENT UPDATE |

October 2021



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DHEC publishes this online report the fourth Friday of each month to exhibit pending regulatory initiatives. The report includes proposed new regulations and amendments and repeals of existing regulations.

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More Information |

DHEC Regulatory Information
www.scdhec.gov/permits-regulations

South Carolina State Register
<https://www.scstatehouse.gov/registerandregs.php>

Terminology
NOD - Notice of Drafting
NPR - Notice of Proposed Regulation
NFR - Notice of Final Regulation

R.61-62, Air Pollution Control Regulations and Standards – Proposed Amendment

State Register Document No. 5056

Exempt from General Assembly review

Link to published Notice of Proposed Regulation (“NPR”): www.scstatehouse.gov/regs/5056.docx

Status

NPR published; comment period closed

Contact Information

Marie F. Brown, Bureau of Air Quality
2600 Bull Street | Columbia, SC 29201
brownmf@dhec.sc.gov

Summary

Pursuant to the Pollution Control Act and the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

The United States Environmental Protection Agency (EPA) promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments at 40 CFR Parts 60 and 63 include revisions to New Source Performance Standards (NSPS) and Emission Guidelines, and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories. The Department proposes amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and R.61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference federal amendments promulgated from January 1, 2020, through December 31, 2020.

The Department also proposes amending R.61-62.5, Standard No. 7, Prevention of Significant Deterioration (PSD), and R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), and the State Implementation Plan (SIP), to incorporate EPA’s clarification of Project Emissions Accounting, as published in the Federal Register on November 24, 2020 (85 FR 74890), to incorporate EPA’s corrections to NSR regulations, as published in the Federal Register on July 19, 2021 (86 FR 37918), and to make other amendments, as necessary, to maintain compliance with federal law.

The Department further proposes amending R.61-62.70, Title V Operating Permit Program, to codify relevant federal amendments to Title V provisions, as published in the Federal Register on February 5, 2020 (85 FR 6431), to ensure compliance with federal law.

The Department also proposes additional changes to R.61-62, Air Pollution Control Regulations and Standards, for overall quality of regulatory text as deemed necessary to maintain compliance with federal law. These changes may include corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement to the text of R.61-62.

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

History |

NOD published; comment period started:	March 26, 2021
NOD comment period closed:	April 26, 2021
Board approval to publish NPR:	August 12, 2021
NPR published; comment period started:	August 27, 2021
NPR comment period closed:	September 27, 2021
Public hearing (scheduled):	November 10, 2021

R.61-34, Raw Milk for Human Consumption – Proposed Amendment

R.61-34.1, Pasteurized Milk and Milk Products – Proposed Amendment

State Register Document No. 5033

General Assembly review required

Link to Notice of Final Regulation (“NFR”) for legislative review: www.scstatehouse.gov/regs/5033.docx

Status |

Legislative review of NFR began: March 2021

Contact Information |

Sandra D. Craig, Bureau of Environmental Health Services
2600 Bull Street | Columbia, SC 29201
craigsd@dhec.sc.gov

Summary |

Pursuant to R.61-34, Raw Milk for Human Consumption, the Department provides sanitation oversight for the production and sale of raw milk that has not been pasteurized for food safety in South Carolina. The Department proposes amending R.61-34 to address the further processing and sale of raw milk products, specifically, cream and buttermilk, and to add additional consumer advisory changes that would be needed for products that receive further processing or become necessary as a byproduct of further processing. The proposed revisions would also update raw milk standards as needed to align certain requirements with the 2019 version of the U.S. Food and Drug Administration Pasteurized Milk Ordinance (“PMO”).

Pursuant to R.61-34.1, Pasteurized Milk and Milk Products, the Department provides sanitation oversight of the production and sale of pasteurized milk and milk products for both intrastate and interstate commerce. The Department proposes adopting requirements of the 2019 PMO through amendment of R.61-34.1. The regulation is currently based on the 2013 PMO and will not meet the federal standards after this year. The amendment of R.61-34.1 to incorporate the updated requirements of the 2019 PMO would enable South Carolina milk producers to continue to meet federal standards and ship milk and milk products for interstate commerce. The Department further proposes clarification of requirements for potable water sources.

The Department also proposes changes for clarity and readability, grammar, punctuation, and codification, and other regulatory text improvements. Proposed amendments to both regulations also include updates to administrative and enforcement provisions. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

History |

NOD published; comment period started:	March 27, 2020
NOD comment period closed:	April 27, 2020
Board approval to publish NPR:	January 7, 2021
NPR published; comment period started:	January 22, 2021
NPR comment period closed:	February 22, 2021
Public Hearing:	March 11, 2021

R.61-56, Onsite Wastewater Systems – Proposed Amendment

General Assembly review required

Link to published Notice of Drafting (“NOD”): [State Register Volume 45, Issue 8 \(Page 8\)](#)

Status |

NOD published; comment period closed

Contact Information |

David R. Vaughan, Bureau of Environmental Health Services
2600 Bull Street | Columbia, SC 29201
vaughadr@dhec.sc.gov

Summary |

Pursuant to R.61-56, the Department helps to ensure the safe treatment and disposal of domestic wastewater to protect the health of families and communities. The Department issues onsite wastewater contractor licenses, permits to construct, and approvals to operate for individual onsite wastewater treatment systems (septic systems).

The Department proposes amending R.61-56, Onsite Wastewater Systems, to clarify definitions, update procedures for subdivisions, revise application fees, and amend OSWW system requirements. The amendments will modernize the regulation and streamline permitting procedures to address needed updates in administering the Onsite Wastewater program.

The Department may also include corrections for clarity and readability, grammar, punctuation, codification, and regulation text improvement. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments and repeals.

History |

NOD published; comment period started:
NOD comment period closed:

August 27, 2021
September 27, 2021

R.61-79, Hazardous Waste Management Regulations – Proposed Amendment

State Register Document No. 5058

General Assembly review required

Link to published Notice of Proposed Regulation (“NPR”): www.scstatehouse.gov/regs/5058.docx

Status |

NPR published; comment period closed

Contact Information |

Joe Bowers, Bureau of Land and Waste Management
2600 Bull Street | Columbia, SC 29201
bowersjb@dhec.sc.gov

Summary |

Pursuant to R.61-79, the Department promulgates regulations establishing and enforcing procedures, standards, and other requirements for the proper management of hazardous waste in South Carolina. The Department proposes amending R.61-79 to adopt the Environmental Protection Agency (“EPA”) final rule, “Modernizing Ignitable Liquids Determinations,” published in the Federal Register on July 7, 2020, at 85 FR 40594-40608. This rule updates flash point test methods used to determine if a liquid waste is hazardous. It allows the use of non-mercury thermometers in approved analytical methods that currently require mercury thermometers. This rule also provides greater clarity to determinations of hazardous waste, provides more flexibility in testing requirements, and improves environmental compliance, thereby enhancing the protection of human health and the environment. Because this rule is no more or less stringent than current Federal requirements, the EPA has made state adoption optional. The Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(A), requires General Assembly review of these proposed amendments.

History |

NOD published; comment period started:	April 23, 2021
NOD comment period closed:	May 24, 2021
Board approval to publish NPR:	August 12, 2021
NPR published; comment period started:	August 27, 2021
NPR comment period closed:	September 27, 2021
Public hearing (scheduled):	November 10, 2021

Proposed New Solid Waste Management Regulation

General Assembly review required

Link to published Notice of Drafting (“NOD”): [State Register Volume 45, Issue 7 \(Page 9\)](#)

Status |

NOD published; comment period closed

Contact Information |

Juli Blalock, Bureau of Land and Waste Management
2600 Bull Street | Columbia, SC 29201
swregdev@dhec.sc.gov

Summary |

Pursuant to R-116, H.4100, the Fiscal Year 2021-2022 General Appropriations Act, Part 1B, Section 34, Proviso 34.62 (“Proviso”), the Department was directed to submit regulations which develop rules to guide all South Carolinians invested in, selling, installing, and using photovoltaic modules and energy storage system batteries in the management of end-of-life photovoltaic modules and energy storage system batteries on solar projects and the decommissioning of solar projects in excess of thirteen acres. The Department proposes promulgating a new regulation as directed in the Proviso. The new regulation will establish rules for the responsible management and disposal of materials and equipment used in utility-scale solar projects.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of the proposed new regulation.

History |

NOD published; comment period started:

July 23, 2021

NOD comment period closed:

August 23, 2021

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

General Assembly review required

Link to published Notice of Drafting (“NOD”): [State Register Volume 45, Issue 8 \(Page 9\)](#)

Status |

NOD published; comment period closed

Contact Information |

Robert J. Devlin, Bureau of Water
2600 Bull Street | Columbia, SC 29201
devlinrj@dhec.sc.gov

Summary |

Pursuant to R.61-119, the Department issues permits and registrations for withdrawal and use of surface water from within the state of South Carolina and those surface water shared with adjacent states. This regulation applies to any person withdrawing surface water in excess of three million (3,000,000) gallons during any one (1) month.

The Department proposes amending R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting, to amend definitions and requirements related to permitting and registration of surface water withdrawals. The amendments will clarify anticipated withdrawal amounts and the Department’s administration of its regulatory role in water resource management.

The Department may also include corrections for clarity and readability, grammar, punctuation, codification, and regulation text improvement. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments and repeals.

History |

NOD published; comment period started:
NOD comment period closed:

August 27, 2021
September 27, 2021

R.61-7, Emergency Medical Services – Proposed Amendment

State Register Document No. 5055

General Assembly review required

Link to published Notice of Proposed Regulation (“NPR”): www.scstatehouse.gov/regs/5055.docx

Status |

NPR published; comment period closed

Contact Information |

Healthcare Quality

2600 Bull Street | Columbia, SC 29201

HQRegs@dhec.sc.gov

Summary |

The Department proposes amending R.61-7 to update provisions in accordance with current practices and standards. Proposed amendments incorporate and revise provisions and definitions to conform to statutory mandates and terminology widely used and understood within the provider community. The Department proposes revising requirements for Emergency Medical Technician (EMT) training programs, ambulance design and equipment, incident reporting, sanitation and infection control, monetary penalties, and other requirements for EMS agency licensure, ambulance permitting, and EMT certification. The Department also proposes amending the regulation to provide direction to emergency personnel in identifying patients who have a Do Not Resuscitate Order (“DNR”), and to add oversight of the Physician Orders for Scope of Treatment (POST) form and carry out other related responsibilities to the form.

The Department further proposes revisions for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation. R.61-7 was last amended in 2016.

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

History |

NOD published; comment period started:	February 26, 2021
NOD comment period closed:	March 29, 2021
Board approval to publish NPR:	August 12, 2021
NPR published; comment period started:	August 27, 2021
NPR comment period closed:	September 27, 2021
Public hearing (scheduled):	November 10, 2021

R.61-75, Standards for Licensing Day Care Facilities for Adults – Proposed Amendment

State Register Document No. 4977

General Assembly review required

Link to Notice of Final Regulation (“NFR”) for legislative review: www.scstatehouse.gov/regs/4977.docx

Status |

Legislative review tolled due to request by House Regulations and Administrative Procedures Committee to withdraw and resubmit

Contact Information |

Bureau of Facilities Oversight
2600 Bull Street | Columbia, SC 29201
HealthRegComm@dhec.sc.gov

Summary |

The Department amends R.61-75 to update provisions in accordance with current practices and standards. Amendments incorporate and revise provisions relating to statutory mandates, update definitions to conform to terminology widely used and understood within the provider community, and revise requirements for incident reporting, staffing and training, medication management, patient care and services, infection control, meal service, emergency procedures, design and construction, fire and life safety, and licensure. The amendments also update the structure of the regulation throughout for consistency with other DHEC Healthcare Quality regulations.

The Department further revises R.61-75 for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation. R.61-75 was last amended in 2015.

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

History |

NOD published; comment period started:	February 28, 2020
NOD comment period closed:	March 30, 2020
Board approval to publish NPR:	August 13, 2020
NPR published; comment period started:	August 28, 2020
NPR comment period closed:	September 28, 2020
Public Hearing:	November 12, 2020

R.61-77, Standards for Licensing Home Health Agencies – Proposed Amendment

State Register Document No. 5057

General Assembly review required

Link to published Notice of Proposed Regulation (“NPR”): www.scstatehouse.gov/regs/5057.docx

Status |

NPR published; comment period closed

Contact Information |

Healthcare Quality

2600 Bull Street | Columbia, SC 29201

HQRegs@dhec.sc.gov

Summary |

Pursuant to S.C. Code Sections 44-69-10 et seq., the Department sets standards for the care, treatment, health, safety, welfare, and comfort of patients served by home health agencies, and for the maintenance and operation of home health agencies. The Department proposes amending R.61-77, Standards for Licensing Home Health Agencies, to ensure alignment with current federal and state laws, and revise definitions and requirements for obtaining licensure, inspections, personnel, enforcement, patient care, record maintenance and retention, and licensure standards.

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

History |

NOD published; comment period started:	April 23, 2021
NOD comment period closed:	May 24, 2021
Board approval to publish NPR:	August 12, 2021
NPR published; comment period started:	August 27, 2021
NPR comment period closed:	September 27, 2021
Public hearing (scheduled):	November 10, 2021