



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214

November 17, 2021

Ms. Ashley Harwell-Beach  
Code Commissioner  
South Carolina Legislative Council  
P.O. Box 11489  
Columbia, South Carolina 29211

Mr. Craig T. Caldwell, Chairman  
South Carolina Small Business Regulatory Review Committee  
1201 Main Street, Suite 1600  
Columbia, South Carolina 29201

Re: Report to the Code Commissioner  
Report to the Small Business Regulatory Review Committee

Dear Ms. Harwell-Beach and Mr. Caldwell:

Every five years, a state agency is required to conduct two reviews of the regulations under its authority - one review for the Code Commissioner (Code Section 1-23-120) and a second review for the Small Business Regulatory Review Committee (Code Section 1-23-270).

The Department has conducted both of these reviews and has combined the findings into the enclosed report.

If you have any questions concerning these reports or any specific regulation proposal, please contact Meredith Cleland or me.

Sincerely,

A handwritten signature in blue ink that reads "Deana West".

Deana West  
Deputy Director Policy Division  
(803) 898-5139  
Deana.West@dor.sc.gov

cc: Hartley Powell, Director  
Meredith Cleland, Deputy Director

# Department of Revenue 5-Year Regulation Review

## November 2021

The General Assembly has enacted two review provisions concerning regulations promulgated by each state agency. The first provision requires an agency to conduct a formal review of all its regulations every five years and to submit a report concerning this review to the Code Commissioner. The second provision requires the agency to review its regulations with respect to their economic impact on small businesses. The Department must review all future regulations within five years of the publication of the final regulation with respect to a regulation's economic impact on small businesses.

This report addresses both the above requirements. The next report will be issued in 2026.

### Requirements for the Report to the Code Commissioner

Code Section 1-23-120(J) states in part:

Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall ... every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering. ... Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

- (1) for which the agency intends to begin the process of repeal in accordance with this article;
- (2) for which the agency intends to begin the process of amendment in accordance with this article; and
- (3) which do not require repeal or amendment.

We have conducted this review and the following details our plan with respect to the regulations under the Department's authority:

### Requirements for the Small Business Regulatory Review Report

In 2004, the General Assembly enacted the "South Carolina Small Business Regulatory Flexibility Act." The Act outlines the importance of small businesses and the need for state agencies to develop regulations that avoid placing unnecessary burdens on small employers and to consider small businesses when promulgating regulations.

Code Section 1-23-270 states:

(F)(1) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall ... every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of

administering. ... Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

- (a) for which the agency intends to begin the process of repeal in accordance with this article;
  - (b) for which the agency intends to begin the process of amendment in accordance with this article; and
  - (c) which do not require repeal or amendment.
- (2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.
- (3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:
- (a) continued need for the regulation;
  - (b) nature of complaints or comments received concerning the regulation from the public;
  - (c) complexity of the regulation;
  - (d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and
  - (e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Under the above provision, the Department must review its present regulations within five years of the effective date of the Act (May 18, 2004) to determine whether to continue a regulation without change or to amend or rescind a regulation to minimize the economic impact on small businesses. A similar review is required of all future regulations within five years of the publication of the final regulation in the State Register.

# 2021 Regulatory Review Report

## Introduction:

A five-year regulatory review has been conducted to ensure that the Department's regulations do not place an undue burden on small business and to determine if any regulation needs to be repealed or amended.

We conducted this regulation review based on the following standard of review established in Code Section 1-23-270(F)(3):

- Continued Need
- Complexity
- Extent of Overlap
- Duplication
- Conflict with other Federal, State and Local Regulations
- Changes in Technology, the Economy and other Factors

## Organization of Regulations:

The Department, through the regulation approval process established in Chapter 23, Title 1, organized regulations by subject matter. Each regulation has "subsections" numbered in a manner to allow future issues concerning the subject matter to be added within the applicable subject matter subsection. The regulations are organized by tax type as follows:

Administrative Regulations	Article 10 of Chapter 117
Sales and Use Tax Regulations	Article 11 of Chapter 117
Income Tax Regulations	Article 12 of Chapter 117
Withholding Tax Regulations	Article 18 of Chapter 117
Corporate License Fee/Annual Report Regulations	Article 20 of Chapter 117
Miscellaneous Tax Regulations	Article 24 of Chapter 117
Property Tax Regulations	Article 37 of Chapter 117
Alcoholic Beverage Licensing Regulations	Chapter 7

## Current Regulation Proposals:

The Department is currently working on proposals to amend the following regulations.

Regulations 7-701.4 and 7-701.5 – ABL Alcohol Content:

The Department has prepared the Notice of Drafting for Regulations 7-701.4 and 7-701.5 that provide alcohol content restrictions for wine that must be revised to conform to law changes enacted by the General Assembly in Act 60 of 2021.

Regulation 7-701.4, concerning “Wines Sold by Beer and Wine Wholesalers,” will be revised to change the alcohol content restriction from sixteen percent (16%) by volume to sixteen and one-half percent (16.5%) by volume.

Regulation 7-701.5, concerning “Natural Wines Defined,” will be revised to change the alcohol content restriction from sixteen percent (16%) by weight to sixteen and one-half percent (16.5%) by weight.

### Future Regulation Proposals:

The Department is considering other proposals to amend or repeal regulations; however, no action has been taken on any such proposals at this time. When a Notice of Drafting is ready for publication in the State Register, the proposal will be posted on the Department’s “Proposed Regulation Calendar” at [dor.sc.gov](http://dor.sc.gov).

Based on our review of Department regulations, the following regulations are under consideration for possible amendment or repeal:

#### Sales and Use Tax

117-309.2 Photographers, Photo Finishers, and Photo Copies

#### Income Tax

117-640.1 Military Pay, Non-Service Income, and Income Earned by Military Spouses

117-640.2 Legal Residence when Military Personnel is Domiciled in a Foreign Country

#### Withholding

117-910.1 Determination of Withholding when Receiving Taxable Wages and Exempt Compensation

Further review will determine if the Department will proceed with either amending or repealing these regulations. In addition, the Department may amend or repeal other regulations as needed prior to the 2026 regulatory review report.

### Conclusion:

Based on the established standard of review, and the Department's ongoing efforts to update and organize regulations, the Department believes its regulations are in compliance with the intent of the General Assembly and do not place an undue burden on small businesses.