

Regulation 61-115

Environmental Electronic Reporting Requirements

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2600 Bull Street | Columbia, SC 29201

Statutory Authority:

Atomic Energy and Radiation Control Act, S.C. Code Ann. Section Section 13-7-10 et seq.; Uniform Electronic Transactions Act, S.C. Code Ann. Section Section 26-6-10 et seq.; DHEC Enabling Act, S.C. Code Ann. Section Section 44-1-10 et seq.; State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. Section Section 44-2-10 et seq.; Safe Drinking Water Act, S.C. Code Ann. Section Section 44-55-10 et seq.; State Recreational Waters Act, S.C. Code Ann. Section Section 44-55-50 et seq.; Hazardous Waste Management Act, S.C. Code Ann. Section Section 44-56-10 et seq.; Infectious Waste Management Act, S.C. Code Ann. Section Section 44-93-10 et seq.; Solid Waste Policy and Management Act, S.C. Code Ann. Section Section 44-96-10 et seq.; Pollution Control Act, S.C. Code Ann. Section Section 48-1-10 et seq.; Environmental Protection Fund Act, S.C. Code Ann. Section Section 48-2-10 et seq.; Pollution Control Facilities, S.C. Code Ann. Section Section 48-3-10 et seq.; Water Quality Revolving Fund Authority Act, S.C. Code Ann. Section Section 48-5-10 et seq.; Stormwater Management and Sediment Reduction Act, S.C. Code Ann. Section Section 48-14-10 et seq.; Erosion and Sediment Reduction Act, S.C. Code Ann. Section Section 48-18-10 et seq.; S.C. Mining Act, S.C. Code Ann. Section Section 48-20-10 et seq.; Coastal Zone Management Act, S.C. Code Ann. Section Section 48-39-10 et seq.; Oil and Gas Exploration, Drilling, Transportation and Production Act, S.C. Code Ann. Section Section 48-43-10 et seq.

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SECTION I. PURPOSE

The purpose of this regulation is to provide the framework by which the South Carolina Department of Health and Environmental Control (Department) will accept, manage, and enforce electronic record submissions from the regulated community. The Department has been authorized to implement these requirements for environmental programs that the United States Environmental Protection Agency (EPA) has delegated, authorized, or approved the Department to administer as referenced in EPA's Cross-Media Electronic Reporting Rule (CROMERR) as published in the October 13, 2005, issue of the Federal Register (70 FR 59848-59889). Additionally, under the Uniform Electronic Transactions Act (UETA) of 2004, S.C. Code Ann. Sections 26-6-10 et seq. the Department is also authorized to include UETA requirements for federally-authorized and state-only programs.

SECTION II. DEFINITIONS

The following words and terms, when used in this section, have the following meanings:

(a) Authorized program—A federal program that the EPA has delegated, authorized, or approved the State of South Carolina to administer, or a program that the EPA has delegated, authorized, or approved the State of South Carolina to administer in lieu of a federal program, under provisions of Title 40 of the Code of Federal Regulations (CFR) and such delegation, authorization, or approval has not been withdrawn or expired.

(b) Copy of record—A true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all of the information provided in the electronic document with descriptions or labeling of the information. A copy of record includes:

(1) all electronic signatures contained in or associated with that document;

(2) the date and time of receipt; and

(3) any other information used to record the meaning of the document or the circumstances of its receipt.

(c) Electronic document—Any information that is submitted in digital form to satisfy requirements of authorized federal or state programs. Information may include data, text, sounds, codes, computer programs, software, or databases.

(d) Electronic document receiving system—A set of apparatus, procedures, software, or records used to receive electronic documents.

(e) Electronic signature—Any information in digital form that is included in, or associated with, an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

(f) Electronic signature agreement—An agreement drafted by the Department and signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signature. The agreement will require such individual to protect the electronic signature device from compromise; to promptly report to the agency or agencies relying on the electronic signatures created any evidence discovered that the device has been compromised; and to be held as legally bound, obligated, or responsible by the electronic signature created as by a handwritten signature.

(g) Electronic signature device—A code or other mechanism that is used to create electronic signatures.

(h) Federal program—Any program administered by the EPA under any provision of 40 Code of Federal Regulations and delegated to the State of South Carolina by the EPA.

(i) Handwritten signature—The scripted name or legal mark of an individual, made by that individual with a marking or writing instrument such as a pen or stylus and executed or adopted with the present intention to authenticate writing in a permanent form.

(j) Person—An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or other legal or commercial entity.

(k) Signatory—An individual authorized to and who signs a document using a format acceptable to the Department.

(l) State program—Any program that is established by state legislation and implemented by the Department under state law, including but not limited to: The Atomic Energy and Radiation Control Act, S.C. Code Ann. Sections 13-7-10 et seq.; Uniform Electronic Transactions Act, S.C. Code Ann. Sections 26-6-10 et seq.; DHEC Enabling Act, S.C. Code Ann. Sections 44-1-10 et seq.; State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. Sections 44-2-10 et seq.; Safe Drinking Water Act, S.C. Code Ann. Sections 44-55-10 et seq.; State Recreational Waters Act, S.C. Code Ann. Sections 44-55-50 et seq.; Hazardous Waste Management Act, S.C. Code Ann. Sections 44-56-10 et seq.; Infectious Waste Management Act, S.C. Code Ann. Sections 44-93-10 et seq.; Solid Waste Policy and Management Act, S.C. Code Ann. Sections 44-96-10 et seq.; Pollution Control Act, S.C. Code Ann. Sections 48-1-10 et seq.; Environmental Protection Fund Act, S.C. Code Ann. Sections 48-2-10 et seq.; Pollution Control Facilities, S.C. Code Ann. Sections 48-3-10 et seq.; Water Quality Revolving Fund Authority Act, S.C. Code Ann. Sections 48-5-10 et seq.; Stormwater Management and Sediment Reduction Act, S.C. Code Ann. Sections 48-14-10 et seq.; Erosion and Sediment Reduction Act, S.C. Code Ann. Sections 48-18-10 et seq.; S.C. Mining Act, S.C. Code Ann. Sections 48-20-10 et seq.; Coastal Zone Management Act, S.C. Code Ann. Sections 48-39-10 et seq.; Oil and Gas Exploration, Drilling, Transportation and Production Act, S.C. Code Ann. Sections 48-43-10 et seq.

SECTION III. APPLICABILITY

(a) This section applies to:

(1) persons and signatories who submit official, final electronic documents to the Department to satisfy requirements of:

(A) authorized programs for which the Department has announced it is accepting specified electronic documents; or

(B) state programs for which the Department has announced it is accepting specified electronic documents;

(2) the Department's electronic document receiving system and other software applications implemented, revised, or modified as announced by the Department; and

(3) authorized programs and state programs for which the Department has announced it is accepting specified electronic documents.

(b) This section does not apply to:

(1) documents submitted via facsimile; or

(2) electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape; or

(3) state programs specifically listed in Section 26-6-30 of the South Carolina Code of Laws Annotated, Chapter 6, Uniform Electronic Transactions Act.

SECTION IV. USE OF ELECTRONIC DOCUMENT RECEIVING SYSTEM

(a) When the Department has announced that it is accepting specified electronic documents, persons who submit electronic documents to the Department to satisfy requirements of a federal or state program must use the electronic document receiving system and associated procedures designated by the Department.

(b) Persons desiring to use an electronic signature device must execute an electronic signature agreement with handwritten wet ink signature or by using an electronic identity verification system utilized by the Department.

(c) An electronic signature device is compromised if the code or mechanism is available for use by any other individual.

(d) An electronic document must bear the valid electronic signature of a signatory if that signatory is required under the federal or state program to sign the paper document for which the electronic document substitutes.

(e) An electronic signature on an electronic document is valid if it has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document; the device has not been compromised; and the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed.

(f) The presence of an electronic signature on an electronic document submitted to the Department establishes that the signatory intended to sign the electronic document and submit it to the Department to fulfill the purpose of the electronic document.

SECTION V. RESPONSIBILITIES OF AN AUTHORIZED ELECTRONIC SIGNATORY

(a) When the electronic signature device is used to create an individual's electronic signature, the signatory must ensure that the code or mechanism is unique to that individual at the time the signature is created, and the signatory must be uniquely entitled to use it. Approved signatories shall:

(1) protect the electronic signature device from compromise;

(2) report to the Department any evidence that the device has been compromised, within one business day of the discovery; and,

(3) prohibit any other individual from using the electronic signature device unique to his or her signature.

SECTION VI. ENFORCEMENT

(a) An electronic signature on an electronic document submitted to the Department is the legal equivalent of a handwritten signature on a paper document submitted to the Department.

(b) Persons and signatories are subject to penalties and other remedies under Department rules or applicable statutes for failure to comply with a reporting requirement of the Department if the person or signatory reports electronically and fails to comply with the applicable provisions of this chapter, applicable statutes, Department regulations, and the electronic participation agreement.

(c) Nothing in this chapter limits the use of an electronic document, copy of record, or information derived from electronic documents as evidence in enforcement proceedings.

(d) The Department may, without advance warning, terminate use of electronic document receiving systems for individuals if, in the Department's sole determination, the use of the electronic document receiving system is performed in a manner contrary to applicable rules and regulations.

SECTION VII. SEVERABILITY

In the event that any portion of this regulation is construed by a court of competent jurisdiction to be invalid or otherwise unenforceable, such determination shall in no manner affect the remaining portions of this regulation, which, in such case, shall remain in effect as if such invalid portions were not originally a part of this regulation.