

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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

THE 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 OF THE SOUTH CAROLINA STATE REGISTER

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 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.

2000 PUBLICATION SCHEDULE

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

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

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

REPRODUCING OFFICIAL DOCUMENTS

All documents appearing in the South Carolina *State Register* are prepared and printed at public expense. All media services are especially encouraged to give wide publicity to all documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the Office of the State Register is 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) 734-2145.

CERTIFICATE

Pursuant to Section 1-23-20, Code of Laws of South Carolina, 1976, this issue contains all previously unpublished documents required to be published and filed before the closing date of the issue.

Lynn P. Bartlett
Editor

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 renewable once.

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SUBSCRIPTIONS

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P.O. Box 11489
Columbia, South Carolina 29211**

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Enclosed is my check or money order for \$_____. Date _____

Name _____

Address _____

Telephone _____

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2469	2 23 00	Volunteer Pharm Tech Free Med Clinics	LLR: Board of Pharmacy

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2481	5 17 00	School Transportation	Board of Education

WITHDRAWN:

DOC NO.	DATE	SUBJECT	AGENCY
2372	6 22 99	Procedures for Contested Cases	Dept Health and Envir Control

No. 2000-14

WHEREAS, Stokely H. Cox, Jr. was indicted by the South Carolina State Grand Jury, on April 17, 2000, on one count of forgery, one count of embezzlement and one count of misconduct in office in violation of South Carolina Code of Laws, Sections 16-13-10 and 16-13-210 and the common law; and

WHEREAS, the above-referenced charges are crimes of moral turpitude; and

WHEREAS, as Mayor of South Congaree, Mr. Cox is an officer of a political subdivision of the State of South Carolina; and

WHEREAS, Article VI, Section 8 of the South Carolina Constitution provides that “[a]ny officer of the State or its political subdivisions . . ., who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.”

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of the State of South Carolina, I hereby suspend Stokely H. Cox as Mayor of South Congaree.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 20th DAY OF
APRIL, 2000.

JIM HODGES
Governor

4 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication May 26, 2000, 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 Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 737-7200.

Affecting Aiken County

Expansion of an existing home health agency to serve the residents of Aiken County.
Tri-County Home Health Care and Services, Inc.
Columbia, South Carolina
Project Cost: \$ 25,000

Affecting Beaufort County

The addition of twenty-five (25) general acute care beds for a total of ninety-three (93) general acute care beds.
Hilton Head Medical Center
Hilton Head Island, South Carolina
Project Cost: \$ 126,240

Affecting Richland County

Construction of a replacement facility for the two existing Ambulatory Care Clinic buildings, which will house the Family Practice Program, Children's Hospital Outpatient Center, Dental Services, Lab, and Pharmacy. The project will not affect licensed bed capacity.
Palmetto Richland Memorial Hospital
Columbia, South Carolina
Project Cost: \$ 12,750,000

Affecting Spartanburg County

Construction of a freestanding multi-specialty ambulatory surgery center to replace the seven (7) OR's at the Spartanburg Hospital for Restorative Care.
Ambulatory Surgery Center of Spartanburg
Spartanburg, South Carolina
Project Cost: \$ 4,782,900

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning May 26, 2000. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 737-7200.

Affecting Charleston County

Renovation and modernization of inpatient operating rooms (Perioperative Services Department) on the existing 7th floor of the hospital.

Roper Hospital, Inc.

Charleston, South Carolina

Project Cost: \$ 2,637,724

Affecting Spartanburg County

Construction of a 43 bed nursing home, which will not participate in the Medicaid (Title XIX) Program, by Lutheran Homes of South Carolina, Inc.

RoseCrest Nursing Center

Inman, South Carolina

Project Cost: \$ 5,930,153

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

Public Notice #00-065-GP-N

May 26, 2000

The South Carolina Department of Health and Environmental Control (DHEC) does hereby give notice of authorization being granted to the following sources who have requested coverage under General Conditional Major Operating Permit (GCMP-03) "Hot Mix Asphalt Plants." This general permit was previously opened for a 30 day public comment period on May 2, 1996, with final issuance on August 5, 1996. Pursuant to South Carolina Regulation 61-62.1, Section II G(7)(a)&(b), the Department may now grant coverage to those qualified sources seeking to operate under the terms and conditions of this general permit. The authorization of each facility's coverage shall be a final permit action for purposes of administrative review.

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5) and 48-1-110(a), and the 1976 Code of Laws of South Carolina, as amended, Regulation 61-62, Air Pollution Control Regulations and Standards, these sources are hereby granted permission to discharge air contaminants into the ambient air. The Bureau of Air Quality authorizes the operation of these sources in accordance with the plans, specifications and other information submitted in the General Conditional Major Permit application. Facilities operating under this permit seek to limit their "potential to emit" to below the thresholds which define a major source by complying with the federally enforceable conditions contained in this permit. Permit coverage is subject to and conditioned upon the terms, limitations, standards, and schedules contained in or specified on said permit.

6 NOTICES

Interested persons may review the final general permit, materials submitted by the applicant, and any written comments received, during normal business hours at SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina, 29201.

This notice is given pursuant to the requirements of South Carolina Regulation 61-62.1, Section II G(7)(c). Comments and questions concerning any of the following individual facility's coverage under this permit should be directed to Mr. Carl W. Richardson, P.E., Director, Engineering Services Division, Bureau of Air Quality, SC DHEC, 2600 Bull Street, Columbia, South Carolina, 29201 at (803) 898-4123.

Florence County

Palmetto Paving Corporation
1115 North Willinston Road (SC Highway 327)
Florence, South Carolina

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

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. 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 individuals listed below, please submit your comments in writing, no later than June 26, 2000 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Bureau of Underground Storage Tank Management
Attn: Chris Doll
2600 Bull Street
Columbia, SC 29201

The following companies and individuals have applied for certification as Underground Storage Tank Site Rehabilitation Contractors:

Class I

Contaminant Control, Inc.
Epic Engineering, Inc.
Pangean Solutions, Inc.

Class II

Barker Filtration, Inc.
Contaminant Control, Inc.
Epic Engineering, Inc.
Pangean Solutions, Inc.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**CHAPTER 61**

Statutory Authority: 1976 Code Section 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend the existing underground Injection Control Regulations, 61-87. Interested persons may submit comments to Mr. Rob Devlin, Department of Health and Environmental Control, Bureau of Water, 2600 Bull St., Columbia, SC, 29201. To be considered, comments must be received no later than 5:00 p.m. on June 26, 2000, the close of the drafting comment period.

Synopsis:

The purpose of the proposed amendments to this regulation is to bring the state regulations into conformance with Federal regulations. These rules were published in the Federal Register on December 7, 1999, 40 CFR Parts 9, 144, 145, and 146. The proposed amendments will include the prohibition of large capacity cesspools and motor vehicle waste disposal wells. Also, the definition of well is modified to conform to Federal regulation. The Department is also making minor corrections.

Legislative review is not required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**CHAPTER 61**

Statutory Authority: 1976 Code Section 44-55-40 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend Regulation 61-71, Well Standards. Interested persons may submit their views by writing to Mr. James Hess, P.G., Manager, Groundwater Management Section, Bureau of Water, at S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201. To be considered, written comments must be received no later than 5:00 p.m. on June 27, 2000, the close of the drafting comment period.

Synopsis:

The Department proposes to revise the regulations to include, but not be limited to, definitions of types of wells to be regulated, location of water wells, construction of water wells, grouting of water wells, and reporting of wells. The intent of the revisions is to bring the regulations into conformance with current industry standards for well construction.

In addition to the proposed amendments stated above, the public and regulated community are invited to recommend additional issues for consideration.

Legislative review will be required.

8 DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: S.C. 1976 Code Section 13-7-10, 13-7-40 and 13-7-45 *et seq.* and Supplement

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-64, X-Rays (Title B), Rules and Regulations for Radiation Control in its entirety. Interested persons may submit their views in writing to Ms. Pamela M. Dukes, Director, Electronic Products Section, Radiological Health Branch, 2600 Bull Street, Columbia, S.C. 29201. This Notice of Drafting is a reissuance of a Notice originally published in the State Register on September 24, 1999. To be considered, written comments must be received no later than 5:00 p.m. on June 26, 2000, the close of the drafting period. All comments previously submitted will be considered.

Synopsis:

The Department proposes to substantially revise R.61-64, X-Rays (Title B) in its entirety. Title B has not been revised since January 1994. The general areas the Department seeks to revise includes: ensuring compatibility with Federal regulations; further clarifying and simplifying the regulations; adding new definitions as required; and, increasing fees. Specifically, the areas the Department seeks to revise include: changing State mammography regulations to be compatible with the Federal mammography requirements; adding regulations to allow South Carolina to become a certifying body for mammography facilities; simplifying the regulations relating to therapeutic equipment; clarifying equipment performance standard testing; changing equipment standards to be compatible with Federal equipment standards; reorganizing the civil penalty schedule into a matrix system to be more consistent with the rest of the Department; increasing registration fees, which have not been increased since 1993; reorganizing the fee schedule to include requiring an application fee for new facilities (currently there is no fee); and, increasing instrument calibration fees, which have not been increased since 1993. The fee increases are needed due to the mandate, under the Atomic Energy and Radiation Control Act, to recover the cost of the program through the collection of fees.

The public and regulated community are invited to recommend issues for consideration to the proposed amendment stated above.

The proposed revision will require legislative review.

Document No. 2528
BOARD OF FINANCIAL INSTITUTIONS
 CHAPTER 15

Statutory Authority: 1976 Code Section 34-29-140(j); 37-1-109

15-63. DOLLAR AMOUNT CHANGES.

Preamble:

The Board of Financial Institutions proposes to amend Regulation 15-63. The proposed amendment will adjust certain specified dollar amounts in Section 34-29-140(a)(2) and Section 34-29-140(a) (3) in the manner provided by Section 37-1-109. This change is to occur on July 1 of every even numbered year, depending on changes in the Consumer Price Index for December of the prior year. The dollar amounts will increase 10% based on the formula as outlined in the statute. The Board is required to announce these changes by Regulation.

Notice of Drafting for the proposed amendment was published in the State Register on April 28, 2000. Comments were solicited for consideration in drafting the proposed amendment.

Notice of Public Hearing and Opportunity for Public Comment:

Should a public hearing be requested, such a hearing will be held on July 19, 2000 at 10:00 a.m. at 1015 Sumter Street, Third Floor, Columbia, S.C. 29201. Written comments may be directed to Mr. David L. Allen, Staff Attorney, Department of Consumer Affairs, P.O. Box 5757, Columbia, S.C. 29250-5757 by June 19, 2000.

Preliminary Fiscal Impact Statement:

The Board does not anticipate any fiscal impact with the implementation of this Regulation.

Statement of Need and Reasonableness:

Description of Regulation: Adjustment of Dollar Amounts.

Purpose: The South Carolina Code, Section 34-29-140(j) provides that the designated dollar amounts in Section 34-29-140(a)(2) and Section 34-29-140(a) (3) be adjusted in the manner provided by Section 37-1-109. These changes are to occur on July 1 of each even numbered year if the percentage of change, based on the Consumer Price Index calculated to the nearest whole percentage point, is 10% or more. Based on the change in the Consumer Price Index for December 1999 the Board calculated a 10% change for the designated dollar amount figures in the Code. As a result, the figures subject to the price index under these sections increased by 10%. The Regulation merely announces the changes calculated pursuant to a formula based on the Consumer Price Index.

Legal Authority: Board of Financial Institutions Regulation 15-63, as amended, Code of Laws of South Carolina 1976.

Plan for Implementation: Administrative.

Determination of Need and Reasonableness Based on all Factors Herein and Expected Benefits:

The Regulation merely announces the changes in the designated dollar amounts in the Code.

Determination of Costs and Benefits: No additional costs will be incurred.

Uncertainties of Estimates: None

10 PROPOSED REGULATIONS

Detrimental Effect in the Environment and Public Health if the Regulation is not Implemented: None

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.lpitr.state.sc.us. If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2527
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Ann. Section 44-56-30

R. 61-79. Hazardous Waste Management Regulations

Preamble:

The Department proposes to amend Regulation 61-79 to adopt federal amendments through July 6, 1999. Adoption of federal amendments will ensure federal compliance.

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments include the following. (1) Addition of four new petroleum refining process wastes, corresponding treatment standards, and exclusion of certain recycled petroleum materials. (2) Various Land Disposal Restrictions including new standards for spent potliners from primary aluminum reduction, emergency revision of carbamate waste treatment standards, and corrections to treatment standards for wood preserving wastes, some metal wastes, and zinc micronutrient fertilizers. (3) Amends regulations governing closure of certain land-based units to provide regulators the discretion to use alternative protective requirements. Although EPA has adopted a postclosure option to allow a variety of authorities (other than permits) for units requiring postclosure care, the Department does not believe that the Hazardous Waste Management Act fully supports this option, and is therefore not adopting the entire closure/postclosure option. (4) Methods for streamlining permitting requirements for treatment, storage and disposal of remediation wastes managed at cleanup sites. (5) Temporary deferral of landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes. (6) Streamlined universal waste management requirements are now applicable to management of spent lamps and will facilitate recycling. Although this particular rule was published July 6, 1999, and would not normally be part of this package, the State is interested in facilitating the recycling of these mercury lamps and has included this rule ahead of schedule for that reason. These rules and other amendments were published in the Federal Register between July 1, 1998, and July 6, 1999. These amendments appeared at 63 FR 42110-42189; 63 FR 54356-54357, August 6, 1998; October 9, 1998; 63 FR 46332-46334, August 31, 1998; 63 FR 47410-47418, September 4, 1998; 63 FR 48124-48127, September 9, 1998; 63 FR 51254-51267, September 24, 1998; 63 FR 56710-56735; October 22, 1998; 63 FR 65874-65947, November 30, 1998; 64 FR 3382; January 21, 1999; 64 FR 6806, February 11, 1999; 64 FR 25408-25417, May 11, 1999; 64 FR 26315-26327, May 14, 1999; 64 FR 36466-36490, July 6, 1999. The Department is also making minor corrections to previous amendments. These amendments and corrections will maintain conformity with federal requirements and ensure compliance with federal standards. Neither a fiscal impact statement, an assessment report, nor legislative review is required. A Notice of Drafting for the proposed amendments was published in the State Register on August 27, 1999.

Discussion of Proposed Revisions:

Changes were made to conform R. 61-79 with federal amendments to 40 CFR 124 through 273 as of July 6, 1999.

Section Citation	Explanation of Change:
124.19(c)	Amend; R.61-79 is expected to be amended this year.
260.10	Amend leadin and definitions for Corrective action management unit or CAMU, facility, miscellaneous unit, remediation waste, and add definition for remediation waste management site, staging pile (HWIR/MEDIA rule). Add definition of lamp and amend definition of universal waste (universal waste rule);
260.11(a)(11), (16)	Amend, add to reflect updates of EPA methods
261.2(c)(3) & table 261.2 & (e)(1)(iii)	Amend to reflect federal corrections to LDR Phase IV
261.3 (a)(2)(iv)(C), (b)(2), (c)(2)(ii)(B) & E	Amend to reflect listings for petroleum refining wastes
261.4(a)(12)	Remove text at (12) and insert (12)(i)&(ii) regarding petroleum refining wastes
261.4(a)(16)&(17)&(17)(iii)	Re-number (17) as (16) and amend former (16) as new (17)&(17)(iii) to facilitate recycling and reflect federal corrections. Omit note.
261.4(a)(17)(v)	Amend to reflect federal correction at renumbered provision
261.4(a)(18), (18)(i)(ii)&(19)	Add provisions regarding petroleum refining wastes
261.4(b)(7)(iii)(A)&(B)	Amend (iii) and add new (A)&(B) to facilitate recycling
261.4(b)(15)&(i) through (v)	Add provision to exempt K169, 170, 171, and 172
261.4(g), (g)(1), (2)&(2)(i)-(iii)	Add provision to exempt dredged material
261.6(a)(3)	Re-number (a)(3)(ii) as (ii)(A); renumber (a)(3)(iii) as (ii)(B); renumber (3)(iv) as (3)(iii) to more closely reflect federal citations. Move (a)(3)(v) to (iv) [including (A) & (B) & (C)] to facilitate recycling; reserve (v)&(vi)
261.9(a)(b)(c)(d)	Amend (a)(b)&(c); add (d) to facilitate lamp recycling
261.31	Amend F037
261.32	Add K169, 170, 171 & 172 refining wastes
261 Appendix VII	Add four listings in alphanumeric order
262.34(a)(1)(i)-(ii), (d)(4)	Amend to update cross references
264.1(g)(11)(iii)&(iv)	Amend and add to facilitate lamp recycling
264.1(j)	Add to facilitate cleanup
264.73(b)(17)	Add to facilitate cleanup
264.90(e), (f)(1)&(2)	Add to facilitate cleanup
264.101(d), (e), (f)	Insert a new (d) to clarify corrective action options, renumber former (d)&(e) as (e)&(f)
264.110(c)(1)&(2)	Add to facilitate closure/postclosure options
264.112(b)(8); (c)(2)(iv)	Add to facilitate closure/postclosure options
264.118(b)(4)&(d)(2)(iv)	Add to clarify closure/postclosure options
264.151 Appendix Header at A-1, A-2, B, C, D	Amend "Bureau of Solid and Hazardous Waste Management" to "Bureau of Land and Waste Management" to reflect new name
264.151 Appendix D, Letter of Credit Covering Cost of Closure and/or Postclosure Care, Irrevocable Standby	"

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Section Citation	Explanation of Change:
Letter of Credit	
264.151 Appendix Header at E, F	"
264.151 Appendix F, Financial Test for Liability Coverage, Letter from Chief Financial Officer	"
264.151 Appendix Header at G	"
264.151 Appendix G, Financial Test for Liability Coverage, Letter from Chief Financial Officer	"
264.151 Appendix Headers at H, I, J, K	"
264.151 Appendix K, Irrevocable Standby Letter of Credit	"
264.151 Appendix Header at L, M-(1)&(2), N-(1)&(2)	"
264.552(a)	Amend to clarify CAMU implementation
264.553(a)&(f)(2)	Amend to clarify TU
264.554(a)-(m)	Add new section regarding staging piles to facilitate closure/postclosure
264.1030(c)	Add note to require process vents following (c), before (d), which is reserved
264.1031 Definitions: Open-ended valve or line, Equipment	Amend to reflect federal correction
264.1031 Definitions: Sampling	Add new definition to clarify system
264.1050 (g)	Amend and reserve to remove recycling exemption
264 Subpart CC	Add Subpart Heading after 264.1079 and before 264.1080
264.1080 (b)(5)	Amend to clarify
264.1083 (a)(1)(i)&(ii) and (b)(1)(i)&(ii)	Add (i)&(ii) to each section to clarify methods for determining VO concentrations
264.1084 (h)(3)(i)&(ii)	Amend (h)(3); add (h)(3)(i)&(ii) to clarify organic air emission standards
264.1086(d)(4)(i)&(e)(6)	Amend to clarify container management standards
264 Appendix V, Group 3-B	Amend PC waste
265.1(b)	Amend to add a cross reference
265.1(c)(14)(ii), (iii)&(iv)	Amend (ii)&(iii), add (iv) to facilitate lamp recycling
265.90(f),(1)&(2)	Add new (f) to facilitate closure/postclosure
265.110(c)&(d)	Add new (c)&(d) to facilitate closure/postclosure
265.112(b)(8), (c)(1)(iv)	Add new (8) and (iv) to facilitate closure/postclosure
265.118(c)(4)&(5), (d)(1)(iii)	Add and reserve new (4); add new (5)&(iii) to facilitate closure/postclosure
265.1033 (a)(2)	Delete text of (2); retain (2)
265.1064 (m)	Amend to cross reference 40 CFR part 61 and 63
265 Subpart CC	Add Subpart Heading after 265.1079 and before 265.1080
265.1084(a)(1)(i)&(ii); (a)(3)(ii)(D)	Add to clarify determination of VO concentrations
265.1084 (a)(3)(ii)(B); (a)(3)(iii)	Amend to clarify determination of VO concentrations
265.1084 (b)(1)(i)&(ii)	Add to clarify determinations of VO concentrations
265.1084 (b)(3)(ii)(B)	Amend to clarify determinations of VO concentrations
265.1084(b)(3)(ii)(D)	Add to clarify determinations of VO concentrations

Section Citation	Explanation of Change:
265.1084(b)(3)(iii)&(iv)	Amend to clarify determinations of VO concentrations & correct "n="
265.1085(h)(3)&(i); (3)(ii)	Amend (3)&(3)(i); add (3)(ii) to control air emission standards
265.1087(e)(6)	Add to control air emission standards
265.1090(f)(2)	Add to establish new recordkeeping requirement
266.20(c)	Amend to correct typographical error
266.80 (a)&(b)	Remove current (a)&(b); amend with new (a), new table, and new (b)(1)&(2)
266.100(b)(3)	Amend to update cross reference to allow for LDR exemption
266.112(b)(2)(i)	Amend to indicate EPA as sole lead
268.1 (f)(2)(3)(4)	Amend (2)&(3); add (4) to facilitate lamp recycling
268.2(c)	Amend to include staging pile
268.2(h)&(k)	Amend to implement new LDR treatment standards
268.7(a)(1)&(2)	Amend to address contaminated soils
268.7(a)(4)Table	Amend to address contaminated soils
268.7(b)(3)(ii)Table	Amend line 6 to reflect federal clarification
268.7(b)(4)(iv)	Amend cross references regarding new LDR rules
268.9(d)(2)&(2)(i)	Amend cross references regarding new LDR rules
268.33(b)&(c)	Amend cross references regarding new LDR rules
268.34(b)-(f)	Add new (b) regarding LDR compliance date; reletter (b)(c)(d)(e) to (c)(d)(e)(f)
268.37	Renumber 268.37 as new 268.35; amend leadin to address petroleum refining wastes; remove previous (a) and amend with new (a)(b)&(c), adding new listings
268.39(c)	Amend effective date
268.40	Amend (g); add new (i)&(j) regarding new LDR treatment standards
268.40 Table: Treatment Standards for Hazardous Wastes	Amend K088, K156; add K169, 170, 171, and 172; amend P194, U404, U408; amend footnotes 9 & 10
268.48(a) Table UTS	Remove eight entries, remove 33 references to footnote 6, and amend footnote 6 to reflect amended effective dates
268.49(c)(3)(A)&(B)	Amend (A)&(B) to clarify LDR rule
268.50(g)	Add new (g) to facilitate HWIR/MEDIA rule
270.1(c)	Amend to facilitate closure/postclosure
270.1(c)(2)(viii)(B-D)	Amend to facilitate lamp recycling
270.2	Add definition of RAP to facilitate HWIR/MEDIA
270.11(d)(1)&(2)	Amend (d) to be (d)(1); Add (2) & certification to facilitate RAPs. Retain first certification in (d)(6) following colon
270.14(a),(b)(7)	Amend to facilitate closure/postclosure, clarify contingency plan reporting
270.21(c)	Amend to specify Part B landfill provisions
270.28	Amend to add new provisions to facilitate closure/postclosure
270.42(j)	Add new (j) to facilitate MACT rule
Appendix I to 270.42 (D)(3)(g)&(N)(3)	Add new provisions to facilitate HWIR/MEDIA rule
270.62(d)	Amend trial burn procedures
270.68	Add new provision to define RAPs

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Section Citation	Explanation of Change:
270.67 & 270.69	Add and reserve
270.73(a)	Amend to facilitate RAPs
270 Subpart H, 270.79 through 270.230	Add new Subpart H to address Remedial Action Plans (RAPs)
273.1(a)(2-4)	Amend (2)&(3); add (4) to facilitate lamp recycling
273.2(a)(1), (b)(2)&(3)	Amend to facilitate lamp recycling
273.3(a)	Amend (a) [only] to facilitate lamp recycling
273.4(a)	Amend to facilitate lamp recycling
273.5(a)(b)&(c)	Amend lead; remove (a)&(b); add new (a)(b)&(c) to facilitate lamp recycling
273.6	Add definition of Lamp; amend definition of LQH and SQH and universal wastes to facilitate lamp recycling
273.7	Add & reserve
273.8	Add new section and lead, move text from 273.5 to facilitate lamp recycling; amend citation at (a)(1)&(2)
273.10	Amend citation in lead
273.13(d)	Add new provisions for lamps
273.14(e)	Add new provision for lamps
273.30	Amend citation in lead
273.32(b)(4)-(5)	Amend to include lamps
273.33(d)(1)&(2)	Add to include lamps
273.34(e)	Add to include lamps
273.50	Amend citation in lead
273.60(a)	Amend citation
273.81(a)	Amend citation in lead

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control (DHEC) invites members of the public and regulated community to attend a staff-conducted informational forum to be held on June 29, 2000 at 10:00 a.m. in Peoples Auditorium, 3rd floor, DHEC, 2600 Bull Street, Columbia, S.C. The purpose of the forum is to answer questions, clarify issues and receive comments from interested persons on the proposed amendment of R. 61-79. Written comments may be submitted for the forum to John Litton, Director of the Division of Hazardous and Infectious Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, comments received for the forum must be received by 12:00 noon on June 29, 2000. Comments received shall be considered by staff in formulating the submission to the Board of Health and Environmental Control for a public hearing scheduled for August 10, 2000. Relevant technical comments shall be summarized for the Board's consideration at the public hearing noticed below.

Information to obtain copies of the proposed text for public notice and comment may be obtained at <http://www.lpittr.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Ann. Sections 1-23-110 and 1-23-111:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its

regularly scheduled meeting on August 10, 2000. The Hearing will be held in the Board Room of the Commissioner=s Suite, third floor, Aycock Building of the Department of Health and Environmental Control (DHEC) at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda is published by the Department ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Written comments to be considered at the public hearing may be submitted by writing to John Litton, Director of the Division of Hazardous and Infections Waste Management, 2600 Bull Street, Columbia SC, 29201 by August 7, 2000. Relevant technical comments will be summarized for the Board's consideration.

Information to obtain copies of the amended regulations to be considered at the Board hearing may be obtained at <http://www.lpitir.state.sc.us/register.htm> or by calling Suzanne Rhodes at (803) 896-4174.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11). This amendment facilitates compliance with federal law.

DESCRIPTION OF PROPOSED AMENDMENT TO REGULATION 61-79 Hazardous Waste Management Regulations: The purpose of this amendment is to meet compliance requirements of the United States Environmental Protection Agency (EPA), which promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments include the following. (1) Addition of four new petroleum refining process wastes, corresponding treatment standards, and exclusion of certain recycled petroleum materials. (2) Various Land Disposal Restrictions including new standards for spent potliners from primary aluminum reduction, emergency revision of carbamate waste treatment standards, and corrections to treatment standards for wood preserving wastes, some metal wastes, and zinc micronutrient fertilizers. (3) Amends regulations governing closure of certain land-based units to provide regulators the discretion to use alternative protective requirements. Although EPA has adopted a postclosure option to allow a variety of authorities (other than permits) for units requiring postclosure care, the Department does not believe that the Hazardous Waste Management Act fully supports this option, and is therefore not adopting the entire closure/postclosure option. (4) Methods for streamlining permitting requirements for treatment, storage and disposal of remediation wastes managed at cleanup sites. (5) Temporary deferral of landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes. (6) Streamlined universal waste management requirements are now applicable to management of spent lamps and will facilitate recycling. Although this particular rule was published July 6, 1999, and would not normally be part of this package, the State is interested in facilitating the recycling of these mercury lamps and has included this rule ahead of schedule for that reason. These rules and other amendments were published in the Federal Register between July 1, 1998, and July 6, 1999.

The Department is also making corrections to previous amendments. These amendments and corrections will maintain conformity with federal requirements and ensure compliance with federal standards. No preliminary assessment report, fiscal impact statement, nor legislative review of this amendment will be required.

Legal Authority for this amendment is S. C. Code Ann. Section 44-56-30, the Hazardous Waste Management Act, to facilitate the Resource Conservation and Recovery Act of 1976 as amended.

Plan for Implementation: Upon publication in the State Register as a final regulation, amended regulations will be provided to the regulated community at cost through the Department's Freedom of Information Office.

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DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The EPA promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments include the following. (1) Addition of four new petroleum refining process wastes, corresponding treatment standards, and exclusion of certain recycled petroleum materials. (2) Various Land Disposal Restrictions including new standards for spent potliners from primary aluminum reduction, emergency revision of carbamate waste treatment standards, and corrections to treatment standards for wood preserving wastes, some metal wastes, and zinc micronutrient fertilizers. (3) Amends the regulations governing closure of certain land-based units to provide regulators the discretion to use corrective action requirements, rather than closure requirements. (4) Methods for streamlining permitting requirements for treatment, storage and disposal of remediation wastes managed at cleanup sites. (5) Temporary deferral of landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes. (6) Streamlined universal waste management requirements are now applicable to management of spent lamps and will facilitate recycling. Although this particular rule was published July 6, 1999, and would not normally be part of this package, the State is interested in facilitating the recycling of these mercury lamps and has included this rule ahead of schedule for that reason. These rules and other amendments were published in the Federal Register between July 1, 1998, and July 6, 1999.

The Department is also making corrections to previous amendments. These amendments and corrections will maintain conformity with federal requirements and ensure compliance with federal standards. No preliminary assessment report, fiscal impact statement, nor legislative review of this amendment will be required.

DETERMINATION OF COSTS AND BENEFITS: Each amendment reflects a federal provision. EPA estimated costs and benefits of the various amendments are summarized below. The summaries are taken from the cited Federal Register notices. A significant regulatory action is defined as one that (5/26/98 in 63 FR 28630) "is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements...; or (4) raise novel legal or policy issues arising out of legal mandates..."

(1) Addition of four new petroleum refining process wastes, corresponding treatment standards, and exclusion of certain recycled petroleum materials. The EPA estimates that the listing of the four refinery wastes, including LDR impacts, the oil-bearing hazardous secondary material exclusion (oil-bearing exclusion) and the wastewaters from the headworks exemptions for crude oil storage tank sediment, will result in nationwide annualized compliance costs between \$20 and \$40 million, with an expected value of about \$30 million (\$1997). The variance is due to a high degree of uncertainty in costing and, particularly, in volumes to be processed. Of special note is the relationship of previously listed petroleum refinery wastes to this rulemaking. The ability to recycle wastes through coker processing will enable refineries to process previously listed wastes in a like manner. A conservative estimate of the volume of these wastes that may be processed, yielding oil that may be converted to product, results in feedstock having a value of some \$14 million to \$28 million (\$1997). Clearly, the impact of this Aother≡ benefit as a potential offset to the costs of the rule can be substantial. If the volumes available from previously listed wastes are higher than estimated, the value of oil generated may substantially offset the costs of this rulemaking. Industry pricing and operating impacts are expected to be minimal. This is due both to the size of the industry and the latitude afforded industry in this rulemaking.

(2) Various Land Disposal Restrictions including new standards for spent potliners from primary aluminum reduction, emergency revision of carbamate waste treatment standards, and zinc micronutrient fertilizers. The EPA considered the zinc micronutrient fertilizer rule, carbamate standards, and potliners to not be economically significant.

(3) Amend the regulations governing closure of certain land-based units to provide regulators the discretion to use corrective action requirements rather than closure requirements. EPA estimated that this rule imposes no new requirements on owners and operators, but, rather, allows flexibility to regulators to implement requirements already in place. EPA estimates a cost savings of \$500,000 for the provisions of the final rule.

(4) Methods for streamlining permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. This "HWIR/Media" rule raises "novel legal or policy issues." The rule addresses three main issues: dredged material exclusion, staging piles, and remedial action plans (RAPs). The rule provides an overall cost savings regarding dredged materials: both minor reductions of compliance costs with respect to current practices of dredged material management, and decreased potential for procedural delays (caused by multiple permit applications) that delay timely waste disposal. Because of the narrow scope of the staging pile provisions and their significant overlap with existing CAMU, temporary unit, and AOC provisions, the Agency believes that this portion of the rule will likely have only minor cost savings and economic impacts. In some cases, staging piles may facilitate the short-term accumulation of remediation wastes until a sufficient volume can be shipped to a treatment or disposal facility or accumulated to implement cost-effective on-site management. In these situations, the new provisions will result in modest cost savings. In the case of Remedial Action Plans, EPA estimates a total cost savings of between \$5 million and \$35 million per year. The total number of facilities estimated to shift to use of RAPs is between seven and 66 facilities, all of which currently treat excavated contaminated media off-site. The total cost savings estimated for this group is between \$5 million and \$35 million per year.

(5) Temporary deferral of landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes. Incremental compliance costs for the known (58 landfills) and estimated worst case (125 landfills) population of affected landfills that received these four waste streams are estimated to range from \$62 to \$219 million. This range is due to the two different populations of affected landfills used (i.e., known and worst case), and also reflects a 10-year period of leachate generation and a 20-year amortization period. However, the upper bound of this cost range may be considerably lower as the result of possible savings gained through contract negotiations for repeat customers who provide consistent revenue streams to shipping companies through their regularly scheduled shipments of leachate. Incremental costs are estimated to be between \$130,000 and \$280,000 annually for the Clean Water Act Exemption with Two-year Impoundment Replacement Deferral regulatory option, with only 8 to 17 of the affected landfills expected to currently operate a surface impoundment.

(6) Streamlined universal waste management requirements are now applicable to management of spent lamps and will facilitate recycling. This rule is regarded as significant because the rule contains novel policy issues, but is not economically significant. Without recycling markets, increased likelihood of disposal is likely to result in unnecessarily high releases of mercury to the environment. This deregulatory action imposes fewer requirements on generators and transporters of spent lamps than current hazardous waste management standards and should stimulate recycling management practices.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

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EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The overall effects of these rules are expected to be beneficial to the public health and environment and also reflect federal provisions in State law.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State=s authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments are not adopted in South Carolina.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: www.lpitr.state.sc.us. If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2407
CLEMSON UNIVERSITY
 CHAPTER 27

Statutory Authority: S. C. Code Section 47-4-40

R27-1025 Cervidae Entering South Carolina.

Synopsis:

This regulation modernizes, clarifies and updates regulations, which govern the importation of Cervidae entering South Carolina to comply with Federal Interstate and International movement of cervids.

Instructions:

Replace R27-1025 with the following amendment.

Text:

R27-1025 Cervidae Entering South Carolina

A. Definitions:

1. "Accredited Herd" – A herd that has passed at least three (3) consecutive official tuberculosis tests of all eligible animals conducted at 10 to 14 month intervals, has no evidence of bovine tuberculosis, and meets the standards of the Uniform Methods & Rules (UMR).

2. "Qualified Herd" – A herd that has undergone at least one complete official negative test of all eligible animals within the past 12 months and is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of the UMR.

3. "Monitored Herd" – A herd on which identification records are maintained for animals 1 year of age and older that are slaughtered and inspected for tuberculosis at an approved State or Federal slaughter facility or an approved laboratory, and animals tested negative for tuberculosis in accordance with the requirements for interstate movement. The initial qualifying total herd size is the annual average of animals 1 year of age and older during the initial test period, which period shall not exceed 3 years. The animals slaughtered must be identified to the herd. The combined number of slaughtered and tested animals in the sample must be evenly distributed over a 3-year period and no less than half of the qualifying animals must be slaughter inspected. The rate to detect infection at a 2-percent prevalence level with 95-percent confidence would be determined by herd size and Appendix I of UMR.

B. The following brucellosis/tuberculosis regulations concerning cervidae (deer, elk) will be met prior to entry.

1. Negative test for brucellosis within thirty (30) days before entry into South Carolina.
2. Tuberculosis testing:
 - (a) No animal with a response to any tuberculosis test is eligible for entry into South Carolina.
 - (b) Cervids that originate from accredited herds may be imported into South Carolina without further tuberculosis testing provided that they are accompanied by a certificate stating that such cervids originated from an accredited herd.
 - (c) Cervids not known to be affected with or exposed to tuberculosis that originate from qualified herds may be imported into South Carolina if the animals are accompanied by a

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certificate stating that they originated from a qualified herd and have been classified negative to an official tuberculosis test that was conducted within 90 days prior to the date of movement. If the qualifying test was administered within 90 days of movement, the animal(s) to be moved do not require an additional test.

- (d) Cervids not known to be affected with or exposed to tuberculosis that originate from monitored herds may be imported into South Carolina if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test that was conducted within 90 days prior to the date of movement.
- (e) Cervids not known to be affected with or exposed to tuberculosis that originated from all other herds may be imported into South Carolina if they are accompanied by a certificate stating that such cervids have been classified negative to two (2) official tuberculosis tests that were conducted no less than 90 days apart, that the second test was conducted within 90 days prior to the date of movement, and that the animals were isolated from all other members of the herd during the testing period.

- 3. Individual identification. All animals must be individually identified.
- 4. Certificate of Veterinary Inspection. All animals must be accompanied by a Certificate of Veterinary Inspection
- 5. Permits required. A prior entry permit must be obtained from the Office of the S. C. State Veterinarian in addition to any other permits required by other state agencies.

C. Exemptions.

Institutions that have been accredited by the American Association of Zoological Parks and Aquariums (AAZPA) are exempt from these requirements when movement is between accredited member facilities. All other movements from AAZPA-accredited members must comply with these movement requirements.

Fiscal Impact Statement:

The Clemson University Livestock-Poultry Health Division estimates that there will be no anticipated additional costs incurred by the State and its political subdivisions as a result of this amendment.

Document No. 2451

STATE CROP PEST COMMISSION/CLEMSON UNIVERSITY
CHAPTER 27

Statutory Authority: S. C. Code Section 46-9-40

27-135. Designation of Plant Pests

Synopsis:

The amendments to the regulation will better align the Commission's list of plant pests with designated federal noxious weeds, and will also anticipate certain plant pests which could be injurious to agriculture.

27-135 (b): This subsection is amended by adding certain plant pests and by changing the names of certain plant pests currently included in the subsection.

Instructions:

Delete those two (2) plant pests as indicated in the amendment; then insert the seventeen (17) new plant pests in appropriate alphabetical order in Regulation 27-135(b).

Text:

27-135. Designation of Plant Pests

Paragraph 2 is amended as follows:

Delete:

Borreria alata (Aublet) de Candolle
Rottboellia exaltata Linnaeus f.(itchgrass, raoulgrass)

Add:

Adelges piceae (balsam woolly adelgid)
Aethina tumida (small hive beetle)
 Africanized honey bee
Anoplophora glabripennis (Asian longhorned beetle)
Anoplophora chinensis (citrus longhorned beetle)
Callidiellum rufipenne (smaller Japanese cedar longhorned beetle)
Caulerpa taxifolia (Mediterranean clone)
Ludwigia hexapetala (water primrose)
Lythrum salicaria (purple loosestrife)
Maconellicoccus hirsutus (Green)(pink hibiscus mealybug)
Pistia stratiotes (water lettuce)
Polygonum perfoliatum (mile-a-minute weed)
Puccinia horiana (Chrysanthemum white rust)
Rottboellia cochinchinensis (Lour.) W. Clayton (itchgrass, Raoulgrass)
Solanum tampicense Dunal (wetland nightshade)
Spermacoce alata (Aublet) de Candolle (winged false buttonweed)
Tomicus piniperda (pine shoot beetle)

Fiscal Impact Statement:

Staff anticipate no additional financial impacts upon local governments. Additional costs to State Government (the Commission) are not anticipated beyond the staff currently authorized.

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Document Number 2452

STATE DEPARTMENT OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1, 3, and 6), 59-30-10(F) (1990), and 59-39-100 (Supp. 1998)

43-259. Graduation Requirements

Synopsis:

Regulation 43-259 specifies graduation requirements. This regulation sets out units required for a state high school diploma, provisions for granting course credit, examination requirements, General Educational Development (GED) equivalency diploma requirements, GED testing, and adult education diploma requirements. This regulation also incorporates recently approved amendments to R 43-234, Defined Program 9-12; and R 43-259.5, Superior Technology or Academic Requirements (STAR) Diploma (formerly Superior Scholars for Today and Tomorrow [STAR] High School Diploma/Scholarship).

Instructions: R43-259 is being amended. The amendments to R43-259, Graduation Requirements, include the editing for grammatical consistency of the exit examination regulation section. The exit examination regulation is also Appendix B of R43-234, Defined Program, Grades 9-12. Please substitute the edited version of the exit examination regulation found in R43-259, Graduation Requirements, for the current Appendix B in R43-234, Defined Program, Grades 9-12. R43-259 reads as follows:

Text:

R 43-259. Graduation Requirements

I. The State High School Diploma (Grades 9–12)

A. Requirements

1. To qualify for a state high school diploma, any student who enrolled for the first time in a ninth-grade class of school year 1997–98 and thereafter must earn a total of twenty-four units of credit in state-approved courses distributed as follows:

	Unit Requirements
English/Language Arts	4.0
Mathematics	4.0
Science	3.0
U.S. History and Constitution	1.0
Economics	0.5
U.S. Government	0.5
Other Social Studies	1.0
Physical Education or Junior ROTC	1.0
Computer Science (including Keyboarding)	1.0
Foreign Language ^{1,2} or Occupational Education ^{1,2}	1.0

¹ For a student in a College Prep program to meet the state high school diploma requirements, one unit must be earned in a foreign language (most four-year colleges/universities require at least two units of the same foreign language); for a student in a Tech Prep program, one unit must be earned in occupational education.

² For a student in a College Prep program to meet the STAR diploma program completer requirements, two units of the same foreign language must be earned. For a student in a Tech Prep program to meet the STAR program completer

Electives	<u>7.0</u>
Total ³	24.0

2. A student first enrolled in the ninth grade prior to the 1997–98 school year is eligible to receive a twenty-unit state high school diploma if all prescribed unit and exit examination requirements are met. The twenty units of credit are distributed as follows:

Unit Requirements

English/Language Arts	4.0
Mathematics	3.0
Science	2.0
U.S. History and Constitution	1.0
Economics	0.5
U.S. Government	0.5
Other Social Studies	1.0
Physical Education or Junior ROTC	1.0
Electives ³	<u>7.0</u>
Total ⁴	20.0

3. The student must complete a study of and pass an examination on the provisions and principles of the United States Constitution and American institutions and ideals. This instruction shall be given for a period of at least one year or its equivalent with the required U.S. History course.

4. The student must attend the accredited high school issuing the diploma for at least the semester immediately preceding graduation, except in case of a bona fide change of residence where the sending school will not grant the diploma. Two units earned in a summer school program do not satisfy this requirement.

5. A student may transfer credit earned in the adult education program to a secondary school to count toward the units of credit required for a state high school diploma, if for each unit being transferred a minimum of one hundred twenty hours has been spent in class time in that subject at that level and the teacher was properly certified to teach the course.

6. No student shall be allowed to apply more than six units earned in summer school, and/or through approved correspondence courses, and/or through adult education programs required for a state high school diploma.

7. The student must pass the exit examination.

requirements, four units of instruction in occupational course work leading to a career goal must be earned. STAR diploma eligibility requirements may be found in State Board of Education regulation 43-259.5.

³ The student must demonstrate computer literacy before graduation.

³ Most four-year colleges/universities require at least two units of the same foreign language.

⁴ The student must demonstrate computer literacy before graduation.

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a) As used in these regulations, “local school board” shall mean the governing boards of public school districts as well as those of other state-supported educational institutions that award state high school diplomas.

b) For purposes of identifying those eligible to take the exit examination, a “tenth grader” and a “twelfth grader” should be defined by the number and type of academic credits earned.

A “tenth grader” shall mean any student in a South Carolina public secondary school or adult education program who has successfully completed the number of Carnegie units specified by the local school board of trustees as necessary to be classified as a tenth grader—provided, however, that the student have at least one unit each in language arts and mathematics or have one language arts unit and be enrolled in a mathematics course leading to one unit of credit.

A “twelfth grader” shall mean any student in a South Carolina public secondary school or adult education program who has successfully completed the number of Carnegie units specified by the local school board of trustees as necessary to be classified as a twelfth grader.

c) The exit examination shall be in standard written American English and shall consist of subtests in reading, writing, and mathematics based upon the Basic Skills Assessment Program objectives or their equivalent. Modifications in the scoring criteria of the writing portion of the exit examination are available for students with English as a second language and students with documented disabilities. Modifications in procedures for reading, mathematics, and writing are available for students with documented disabilities.

d) To pass the exit examination, each student shall meet the minimum performance standard established by the State Board of Education on each subtest of the exit examination.

e) A student who is enrolled in the South Carolina public school system for the entire tenth-grade, eleventh-grade, and twelfth-grade years and remains actively enrolled and in good standing until graduation shall have a minimum of four opportunities to pass the examination.

f) Any student who fails to pass the exit examination shall take an alternate form of only the particular subtest(s) on which he or she did not meet the minimum performance standard(s).

g) Any student who fails to pass the exit examination and who is actively enrolled in school shall have one opportunity per year to pass an alternate form of the examination by meeting the minimum performance standard in effect at the time of the test administration, except that during the twelfth grade the student shall have two opportunities to pass an alternate form of the examination.

h) Local school boards shall insure

(1) that the administration and security procedures established by the State Board of Education for the purpose of the exit examination are implemented;

(2) that students and parents/guardians are adequately notified that passage of the exit examination is a requirement for a state high school diploma; notification shall be

written,

issued through an established procedure, and

- issued to students and parents/guardians by the seventh grade or upon entry

into the system, whichever occurs later;

•

(3) that the exit examination administration schedules are publicized;

(4) that students who are recommended for a state high school diploma have passed all subtests of the exit examination;

(5) that students who do not pass a particular subtest(s) of the exit examination are provided academic assistance related to the subtest(s) not passed;

(6) that students with disabilities who are not candidates for a high school diploma and for whom the exit examination is not appropriate are identified in a timely manner;

(7) that students who have met all other requirements for graduation but have not passed the exit examination are advised that they may elect one of the following alternatives:

to accept, in lieu of a state high school diploma, a certificate indicating the number of credits earned and the grades completed;

• to continue active enrollment in the school until he or she either passes the exit examination or reaches the age of twenty-one; or

to accept a state certificate and acquire additional opportunities to pass the exit examination by enrolling in an adult education program.

i) The State Superintendent of Education may through administrative action address any special situations not covered by these regulations or by any policy, guidelines, or procedures pursuant hereto. Any administrative action taken under this regulation will be presented to the State Board of Education during the next regularly scheduled meeting of the Board.

B. Provisions for Granting High School Credit

1. Adult Education: High school credit earned in an approved adult education program may be used to meet regular high school graduation requirements if (a) a minimum of one hundred twenty hours of attendance has been completed for each unit being transferred and (b) the teacher providing the instruction is properly certified to teach the course. Written approval for exceptions to this standard must be requested by the high school principal and approved by the Director of the Office of School Quality.

2. Credit shall be accepted when official transcripts are received from schools that are accredited by the State or by the New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, or Northwest Association of Colleges and Schools. Credit from nonaccredited institutions must be validated by standardized examinations to the satisfaction of the local administrator.

3. College course credit may be earned and applied to the units required for a state high school diploma by students in grades nine through twelve and/or adult education programs. The acceptance of credits for college course work shall be subject to the following conditions:

Local school boards may allow students to take college courses for Carnegie units of credit. Courses may be offered through distance-learning and cooperative agreements with higher education institutions.

A three-semester-hour college course shall transfer as one-half Carnegie unit.

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Only courses applicable to baccalaureate degrees or to associate degrees in arts or in science offered by institutions in the State that are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools may be accepted for Carnegie units of credit.

Tuition and other college course fees shall be paid by the individual student or his parent(s) and/or legal guardian(s), unless otherwise specified in local school district policy.

C. Special Education Minimum Curriculum: A state high school diploma, a STAR diploma, a state certificate, or a certificate designed and issued by the school district shall be awarded students who complete a program of prescribed special education. If a determination is made that a student with a disability shall pursue credits toward a state high school diploma or a STAR diploma, the following apply:

Alternative 1. Credits toward a state high school diploma or a STAR diploma may be awarded only by persons who are certified in or who hold out-of-field permits in the subject in which credit is earned. A student with a disability receiving such credits shall do so only after successfully attaining similar course objectives prescribed for nondisabled students and in accordance with cooperative instructional arrangements between general education and special education as set forth in the student's Individualized Education Program.

Alternative 2. Beginning with the ninth-grade class of 1997–98 and thereafter, students properly in membership in programs for students with disabilities may receive a state high school diploma provided they earn a total of at least twenty-four units, seventeen of which are the same required of nondisabled students; seven of the twenty-four units may be earned in special education. To meet the STAR diploma program completer requirements for students with disabilities in a College Prep program, the student must earn two units in the same foreign language and a total of at least twenty-four units, eighteen of which are the same required of nondisabled students; six of the twenty-four units may be earned in special education. To meet the program completer requirements for Tech Prep students with disabilities, the student must earn four units in occupational course work leading to a career goal and a total of at least twenty-four units, twenty of which are the same required of nondisabled students; four of the twenty-four units may be earned in special education. When an elective credit is to be issued in any category of disability, the competencies and criteria for successful completion must be specified in the Individualized Education Program.

II. The State High School Equivalency Diploma

The State Board of Education recognizes the high school–level GED Test battery and shall issue a state high school equivalency diploma to eligible candidates who successfully complete the tests. The State Board of Education authorizes the administration of the GED Tests by the State Department of Education under policies established by the State Board of Education and the Commission on Educational Credit and Credentials (American Council on Education) and procedures established by the GED Testing Service, Washington, DC.

A. Eligibility Requirements for Equivalency Diploma Candidates

1. Service Personnel and Veterans

To be eligible for a state high school equivalency diploma, the candidate must be

- a) either a resident of South Carolina or a former resident whose most recent elementary or secondary school attendance was in South Carolina, and
- b) seventeen years of age or older.

2. General Adult Population

To be eligible for a state high school equivalency diploma, the candidate must be

- a) either a resident of South Carolina or a former resident whose most recent elementary or secondary school attendance was in South Carolina, and
- b) seventeen years of age or older and not enrolled in high school.

A person seventeen or eighteen years of age shall submit a letter from the principal of the last school he or she attended or from the district superintendent over said school. The letter shall verify the candidate's date of birth and the date of his or her last attendance at the school. In the event that the last school attended was outside South Carolina, a person seventeen or eighteen years of age may submit a letter from an adult education coordinator or director verifying his or her date of birth and the date of last attendance in school. Verification by the adult education coordinator or director in this instance shall be based upon inspection of transcript records. Verification letters shall be forwarded to the Chief Examiner, GED Testing Office, Office of Adult and Community Education, State Department of Education, Rutledge Building, Columbia, South Carolina 29201.

Testing of enrolled high school youth who are at risk of school failure and will not graduate until after their normal age-level peers may be permitted under guidelines approved by the State Board of Education and the Commission on Educational Credit and Credentials, American Council on Education.

3. Special-Needs Exception for Sixteen-Year-Old Juvenile Offenders, State Department of Juvenile Justice

- a) The juvenile must be at least sixteen years of age.
- b) The juvenile must be under the jurisdiction of the Family Court based on an adjudication of delinquent behavior and must be committed to a juvenile correctional institution or committed to participate in community-based alternative programs under the jurisdiction of the Department of Juvenile Justice.
- c) The Family Court must certify that it is in the best interest of the juvenile to be exempted from the public school compulsory attendance law.
- d) The student's attendance in public school or completion of community-based alternative program is not feasible upon release from a juvenile correctional institution due either to the necessity of immediate employment or to his or her immediate enrollment in postsecondary education.
- e) Prior to taking the GED Tests, the juvenile must be tested using the official GED practice tests and must score a minimum of 220.

B. Passing Score Requirements

1. Eligible candidates who were initial examinees before July 1, 1991, were awarded a state high school equivalency certificate if the candidate attained an average standard score of 45 or above for the five tests in the GED battery. The South Carolina high school equivalency certificate shall not be awarded after July 1, 1995.

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2. Eligible candidates who were examinees after July 1, 1991, were awarded a state high school equivalency diploma if he or she attained a minimum-standard score of 35 on each of the five tests in the GED battery and an average standard score of 45 or above for the five tests.

3. Eligible candidates who are examinees after January 1, 1997, shall be awarded a state high school equivalency diploma if he or she attains a minimum-standard score of 40 on each of the five tests in the GED battery and an average standard score of 45 or above for the five tests.

C. Testing and Credential Application Procedures

1. GED Testing in South Carolina

a) The GED Tests may be scheduled and administered at adult education centers, technical education centers, and other locations approved by the Director, Office of Adult and Community Education, State Department of Education.

b) Eligible candidates to be tested in South Carolina must submit an application to the GED Testing Office, State Department of Education, or its designee, and pay the required fee set by the State Department of Education for the testing service and credential.

c) Score reports shall be provided to initial examinees only after their completion of all five tests in the GED Test battery.

d) Retesting of examinees who do not pass the GED Tests shall be conducted as follows:

Candidates who have attained a total combined score below 215 on prior administrations must retake the full battery of five tests.

Candidates who have attained a total combined score of 215 or higher on prior administrations may be permitted a partial administration of one or more tests.

No more than three testing sessions (either initial or retesting sessions) may be scheduled for a candidate within any twelve-month period.

Before an application for a second or subsequent retesting session is approved, either a waiting period of six months from the last retesting must elapse or such application must be accompanied by a letter of recommendation from an adult education coordinator or director certifying that the GED candidate has completed a course of instruction since his or her last retesting and has demonstrated readiness on the GED pretest.

e) Nonresident individuals who are living temporarily in South Carolina may be permitted to take the GED Tests in South Carolina if such individuals meet minimum age requirements and are not enrolled in high school. Nonresident individuals shall not be awarded a state high school equivalency diploma unless their most recent elementary or secondary school of attendance was in South Carolina. Nonresidents must submit an application for testing services to the GED Testing Office, State Department of Education and pay the required fee set by the State Department of Education to cover the full costs of the testing and the score report.

f) The Department of Education may offer the Spanish version of the GED Tests. A score report will be issued upon the student's completion of the five subtests. The South Carolina high school equivalency diploma will not be issued based on the Spanish version of the GED Tests.

2. GED Testing Outside South Carolina

Eligible candidates tested outside South Carolina must submit a diploma application to the GED Testing Office, State Department of Education and pay the required fee to cover the costs of the diploma. Such applicants shall arrange for transcripts (score reports) to be sent directly to the Chief Examiner, GED Testing Office, State Department of Education. Transcripts will be accepted as official only when reported directly to the Department of Education by (a) official GED Testing Centers, (b) the Transcript Service of the Defense Activity for Nontraditional Education Support (DANTES), or (c) the GED Testing Service, Washington, DC. Eligible candidates who are tested outside of South Carolina must meet the State’s passing score requirements in order to receive a state high school equivalency diploma.

III. Adult Education: High School Diploma Program

A. Requirements

The number of units shall be consistent with the requirements prescribed by the State Board of Education for adults to complete the requirements for a state high school diploma.

1. A student first enrolled in adult education on or after July 1, 2000, must earn a total of twenty-four prescribed units of credit and pass the exit examination to earn a state high school diploma. The twenty-four units of credit are distributed as follows:

	Unit Requirements
English/Language Arts	4.0
Mathematics	4.0
Science	3.0
U.S. History and Constitution	1.0
Economics	0.5
U.S. Government	0.5
Other Social Studies	1.0
Computer Science (including Keyboarding)	1.0
Electives	<u>9.0</u>
Total ⁵	24.0

2. A student first enrolled in adult education on or before June 30, 2000, is eligible to receive a twenty-unit state high school diploma provided all prescribed unit and exit examination requirements are met on or before June 30, 2001. The twenty units of credit are distributed as follows:

	Unit Requirements
English/Language Arts	4.0
Mathematics	3.0
Science	2.0
U.S. History and Constitution	1.0
Economics	0.5
U.S. Government	0.5
Other Social Studies	1.0
Electives	<u>8.0</u>
Total ¹	20.0

⁵ The student must demonstrate computer literacy before graduation.

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3. Class time may be waived only when objective evidence of subject matter attainment has been demonstrated by an acceptable performance on a state-approved, subject-matter examination. Credit granted by objective evidence must be approved by the principal of the high school awarding the diploma. A copy of the test results with information as to the date of the examination, the name and form of the state-approved, subject matter examination, the name of the examiner, and the principal's signature of approval must be filed in the school records for the adult.

4. Membership in an adult education program shall be limited to individuals who are eighteen years of age or over and have left the elementary or secondary school, except when the local school board assigns students of less than eighteen years of age who are not officially in membership in a regular school. These students may be assigned to an adult education program when they exhibit either an unusual educational need or physical, social, or economic problems that can be served more effectively by the adult education program. No student under the age of sixteen may be assigned to the adult education program for any reason.

5. No student shall be graduated from the adult education program prior to the time that he or she would have graduated from a regular high school. A semester shall be completed in residence (*i.e.*, through actual attendance in the adult education program) as a prerequisite for a student to be eligible for a state high school diploma. This semester in residence is a prerequisite for the state high school diploma and may not be waived.

6. A student may not earn more than eight units of credit through one or a combination of the following methods: (a) passing a state-approved, subject-matter examination (maximum six units of credit allowed), (b) participating in occupational training and similar experiences, and (c) passing approved correspondence courses.

B. Provisions for Granting Course Credit

1. Course credit shall be accepted when official transcripts are received from schools that are accredited by the State or by the New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, or Northwest Association of Colleges and Schools.

2. Credit for correspondence courses shall be accepted from the extension divisions of South Carolina colleges and universities and/or the United States Armed Forces Institute. Credit for courses completed through correspondence with other institutions may be accepted when the quality of the work completed is validated by a subject-matter examination. Credit from institutions not accredited by the State Board of Education or by the New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, or Northwest Association of Colleges and Schools shall be validated by subject-matter examination or tentative assignment of students in classes for a probationary period.

3. Credit for occupational courses shall be granted on the basis of the following criteria: (a) classes meeting for one hundred twenty or more hours may carry one unit of credit, (b) classes meeting for two hundred forty hours may carry two units of credit, and (c) the hour requirements may be shortened by demonstrated proficiency of the adult student. Trade tests may be part of the evaluative process in granting credit.

4. Credit for occupational training and experience: In the determination of units of credit to be allowed for the educational aspects of occupational training and work experience, the local administrator may request a maximum of six units of credit, provided the student establishes that he or she has had formal training (through

trade school, apprenticeship, special programs or course work, and so on) plus at least two years of successful experience verified by his or her employer in the occupation. The issuance of occupational and work experience credits shall be allowed only when the individual has satisfied the necessary academic requirements. The principal of the high school awarding the diploma must recommend that credit be granted for occupational training and experience. The adult student seeking credit for occupational training and experience shall complete a required form stating his or her qualifications. The completed form shall be forwarded to the Office of Adult and Community Education and, if approved, shall become a part of the adult student's official school record. (Form AE-Vo. 1, "Evaluation of Occupational Training and Experience for Granting High School Credit in Adult Education" shall be provided by the Office of Adult and Community Education.)

5. Credit earned in an adult education learning laboratory may be granted only by a teacher certified in the area in which credit is to be awarded or via a satisfactory score on an approved, standardized subject-matter examination.

C. Approved Programs and Granting of Credit: No credit toward a state high school diploma will be granted to any adult education student unless the program has been officially approved in writing by the Office of Adult and Community Education and the Office of School Quality. In instances where programs do not meet the minimum length of time, no credit shall be granted to any student in the high school completion program, unless course credit is validated by state-approved examination. Program related requirements include, but are not limited to, the following:

1. Each district shall provide properly certified administrative, teaching, and supervisory staff for the adult education program. Staff members may be either full-time or part-time, according to the size of the program.

2. Each director employed on or after July 1, 1976, shall either be certified in one of the acceptable areas of certification for an adult education supervisor or hold an advanced degree in the field of adult education and a South Carolina teaching certificate.

3. Each adult education program shall have a director (full or part-time).

4. Each center or program supervisor or coordinator shall meet the same qualifications for certification and dates of employment as set forth in item 2, preceding, for program directors or have a master's degree with certification in the field of guidance.

5. Each adult basic education teacher shall hold at least the bachelor's degree or degree equivalent.

6. Each adult basic education teacher employed on or after July 1, 1976, must either be certified as an elementary teacher or hold at least a bachelor's degree or degree equivalent and have earned eighteen hours in methods, strategies, materials, and/or psychology of teaching adults.

7. Each adult high school subject area teacher shall be certified to teach the subjects assigned.

8. Each adult learning laboratory instructor shall hold at least a bachelor's degree or degree equivalent and either be certified as an elementary or secondary teacher or have earned at least eighteen hours in methods, strategies, materials, and/or psychology of teaching adults.

9. Any staff member who is assigned duties in areas for which he or she is not properly certified must (a) hold a valid teaching credential, (b) have completed twelve semester hours of credit in the area assigned, and

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(c) obtain an out-of-field permit from the Office of Teacher Education and Certification. The staff member must earn six semester hours toward proper certification each year for renewal of the out-of-field permit.

10. A student must attend class a minimum of sixty hours to receive consideration for a high school unit of credit and thirty hours for consideration for one-half unit of credit in a course. Any work missed in the high school completion program must be made up. This requirement does not apply to instances in which credit has been validated by means of state-approved examination.

11. The maximum student membership in an adult education class shall be thirty students per teacher.

12. Innovative programs will be reported to the Office of Adult and Community Education when the waiving of certain established standards is necessary for experimentation. Requests for prior approval shall be made to the Office of Adult and Community Education and approved by the Office of School Quality.

13. An accurate record of the attendance and achievements of each student shall be kept and should be stored in locked, fireproof filing cabinets or vaults to provide security against destruction.

14. Students enrolled in the high school completion program shall have access to school library facilities.

Fiscal Impact Statement: FY 2000–2001 is the final year of phasing in the twenty-four unit diploma requirements. Currently, with a 3 percent inflation factor applied, the total four-year incremental costs are projected to be \$18,034,330. The previous three years of funding through FY 1999–2000 totals approximately \$13,131,794. Final year appropriation needed for FY 2000–2001 will total approximately \$4,902,536.

Document No. 2471

EMPLOYMENT SECURITY COMMISSION

CHAPTER 47

Statutory Authority: 1976 Code Section 41-29-110

Synopsis:

This regulation provides further guidance and interpretation necessary for the administration of Chapters 27 through 41 of the South Carolina Employment Security Law, not otherwise provided for in such chapters.

With the exception of the addition of Regulation 47-16.D, all other changes to Chapter 47 as included in this revised edition are part of a general revision and updating of Chapter 47 to reflect current law and policies.

Article 1 General Provisions: General revision and updating to 47-1 and 47-2.

Article 2 General Regulations: General revision and updating of 47-13 through 47-36. Adds 47-16.D to implement the collection authority provisions enacted by the General Assembly in 1999 as part of Act 73.

Article 3 Appeals Regulations: General revision and updating of 47-51 through 41-57.

Article 4 Seasonal Regulations: Eliminated from Chapter 47, as “seasonal employment” was repealed on June 15, 1981.

Instructions: Replace old Chapter 47 regulations in its entirety with the new Chapter 47 regulations.

Text:

ARTICLE 1.

GENERAL PROVISIONS

47-1. Cash Value of Certain Remunerations.

A. The South Carolina Employment Security Law, provides in Section 41-27-380, that “Wages means all remuneration paid for personal services, including commissions and bonuses and the cash value of all the remuneration paid in any medium other than cash . . . The reasonable cash value of remuneration paid in any medium other than cash . . . shall be estimated and determined in accordance with rules prescribed by the Commission.”

B. The Commission accordingly prescribes that:

1. If board, lodging, or any other payment in kind considered as payment for services performed by a worker, is in addition to or in lieu of (rather than a deduction from) money or wages, the Commission shall determine or approve the cash value of such payment in kind, and the employer shall use these cash values in computing contributions due under the law.

2. Where cash value of board and lodging furnished a worker is agreed upon in the contract of hire the amount so agreed upon shall, if more than the rate prescribed herein, be deemed to be the value of such board and lodging, subject to review by the Commission. Until and unless in a given case the rate for board and lodging is determined by the Commission, board and lodging furnished in addition to and in lieu of money wages shall be deemed as follows:

- a. Meal rates as established by the Budget and Control Board.
- b. Lodging rates as determined reasonable by the Commission.

47-2. Authorized Representatives of the Commission.

The Commission may designate by written authorization any of its employees as its representatives to administer oaths and affirmations, issue subpoenas for the production of books, papers, correspondence, and other memoranda deemed necessary by it as evidence in connection with disputed or contested claims, or in the administration of the South Carolina Employment Security Law.

ARTICLE 2.

GENERAL REGULATIONS

(Statutory authority: 1976 Code Sections 41-29-110, 41-29-130, and 41-29-230)

47-11. Displaying of Informational Posters.

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All employing units having individuals engaged in employment, as defined by Section 41-27-230, shall post and maintain in conspicuous places where workers perform their services such informational posters as are provided by the Commission so that the information printed thereon may be read by all workers.

47-12. Displaying Coverage Information.

Every employer (including every employing unit which has elected, with the approval of the Commission to become an employer) shall display and maintain such printed posters as the Commission may prescribe and furnish. Such posters shall be displayed by the employer in conspicuous places where workers perform their services, but only so long as the employer shall be subject to the law.

47-13. Furnishing Printed Information to Workers.

The posters referred to in regulation 47-12 shall inform the worker to report promptly to the nearest Commission office in the event of his or her becoming unemployed and shall give the location of that office.

47-14. Records.

A. Each employing unit shall preserve for five years existing records with respect to individuals in its employ on or after July 1, 1936, indicating the data hereinafter set forth:

1. For each pay period:

- a. The beginning and ending dates of such period.
- b. The largest number of workers in employment during each calendar week of such pay period.

2. For each individual employed during such period:

- a. His name and social security account number.
- b. Number of hours worked each week, if less than full time.
- c. His monetary wages (including special payments) paid for employment.
- d. Reasonable cash value of remuneration paid by the employer in any medium other than cash. (See 47-1).
- e. The date on which he was hired, rehired, or returned to work after temporary layoff, and the date and reason he was separated from employment.

B. Records in Regard to Benefits:

1. In addition to the requirements set forth in regulation 47-14.A, each employer shall keep his payroll records in such form, with respect to each worker that would be possible from an inspection thereof to determine:

- a. Wages earned, by weeks as described in regulation 47-24.B.
- b. Whether any week was in fact a week of less than full-time work.
- c. Time lost, if any, by each such worker, due to his unavailability for work.

47-15. Reports and Instructions Relative to Report Form.

A. Each employing unit shall make such reports as are prescribed by the Commission on forms issued by and required to be returned to the Commission.

B. Each employing unit shall comply with instructions pertaining to the contents and due date of any report form issued by the Commission. Such instructions shall have the full force and effect of regulations when published.

C. Reports Covering Wages of Individuals in Employment:

Except as otherwise provided, each employer shall submit on or before the last day of the first month following the quarter covered by such report, a form report showing each individual in his employment during the preceding quarter. The form shall set forth:

1. The employer's name and account number assigned by the Commission.
2. The worker's full name.
3. The worker's social security account number.
4. Total wages paid to the worker during the quarter.
5. Such other information as required by the form.

D. Where employing units have failed to make reports previously required and similar information is now required on a different basis, the Commission may allow such delinquent reports to be filed showing only such information as is now necessary; provided however, nothing herein shall be construed as relieving such delinquent employing unit from any penalty or liability for previous failure to file such report at the time previously required.

47-16. Contributions: Interest.

A. Contributions shall be payable quarterly with respect to wages paid within each calendar quarter.

B. Contributions shall become due on, and shall be paid on or before the last day of the month following the quarter for which they are payable. However, an application may be filed with the Commission for extension of the due date of contributions payable and upon approval of such application the due date for such contributions may be extended not more than fifteen (15) calendar days.

C. Employers who are delinquent in the payment of contributions with respect to any calendar year or portion thereof, may upon application, be authorized to pay the delinquent contributions, with interest on deferred amounts until actually paid, in consecutive installments of such amounts and over such periods and at such times as may be approved by the Commission or the Executive Director thereof, provided that the entire unpaid balance shall become due immediately if the employer fails to pay any installment when due.

D. In the event a lien in favor of the Commission is filed against an employer, all collection remedies set forth in Title 12, Chapter 54 of the South Carolina 1976 Code would be used to enforce payment of the amount due.

47-17. Information to be Furnished with Respect to Changes in Ownership, Notification of Acquisitions, and Methods for the Transfer of Experience Rating Reserve Accounts.

A. Notification to Commission of discontinuance of business and changes of ownership for purposes of status determination and experience rating succession.

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1. Any employer who discontinues business shall give notice to the Commission in writing. This notice shall include the exact date of such discontinuance and shall be submitted within thirty (30) days after the date of discontinuance.

2. Any employer who by any means transfers substantially all (95 per cent or more) of its business or assets thereof to another shall notify the Commission in writing. This notice shall be submitted within thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name and post office address of the employing unit to whom the transfer was made.

3. Any employer who by any means transfers a portion (less than 95 per cent) of its business to another shall notify the Commission in writing. This notice shall be submitted within thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name and post office address of the employing unit to whom the transfer was made. The Commission shall be informed as to the nature and extent of each such partial transfer with particular reference to the description or identification of the part of the business transferred, together with a notation as to the proportion of the total business thus transferred.

4. Each employing unit which by any means acquires all or a portion of the business, or assets thereof, of any employer, or which has acquired its own business, or all of the assets thereof, from another, which at the time of such acquisition was an employer subject to the Act, shall notify the Commission in writing within thirty (30) calendar days after the end of the quarter in which such acquisition occurred. This notice shall be in such form as to include:

a. From whom acquired.

b. The exact date of acquisition.

c. The portion of the business or assets of the predecessor acquired by the successor.

d. Whether acquirer is an individual, partnership, or corporation. If a partnership, the name, address and legal domicile of each partner must appear.

5. In the event of any change of form of organization between, to or from a corporation to a partnership or individual ownership; from partnership to corporation or individual ownership; or from individual ownership to partnership or corporation, notice of such change and the date thereof shall be immediately made to the Commission by the successor organization.

6. The employer, if a corporation, shall immediately notify the Commission of any change of name, forfeiture, or cancellations of charter, reincorporation, merger or consolidation, or any other change in corporate entity.

7. The employer, if a partnership, shall immediately notify the Commission of any change in the partnership by reason of any person ceasing to be or becoming a partner, and shall report the name of any such person and the date that he or she ceased to be or became a partner.

8. Employers shall immediately notify the Commission in the event of consolidation, dissolution, receivership, insolvency, bankruptcy, composition, assignment for the benefit of creditors, or similar proceedings.

B. Total Transfer of Experience Rating Reserve Accounts Where Substantially All (95 per cent or more) of a Business, or the Assets Thereof, Have Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.2 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Commission.

2. The acquiring employer may expedite the total transfer to it of the reserve account of the transferring employer by making application therefore by letter or on such forms as the Commission may furnish. Such application should be filed with the Commission by the end of the quarter in which the succession takes place and in no case later than thirty (30) calendar days after the close of the quarter in which the succession occurred.

3. The Commission shall upon its own initiative transfer the experience rating reserve account of the transferring employer to the acquiring employer whenever the Commission ascertains that there has been a transfer of substantially all of a business, or assets thereof, inasmuch as a total transfer of the experience rating reserve account under such a condition is required by law.

C. Partial Transfer of Experience Rating Reserve Accounts Where a Portion (less than 95 per cent) of a Business Has Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.3 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Commission.

2. The transferring employer may request by letter or by such forms as the Commission may furnish that the portion of its experience rating reserve account which is attributable solely to the portion of the business acquired by the acquiring employer be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the close of the quarter within which the succession occurred.

a. The acquiring employer may request by letter or by such forms as the Commission may furnish that the portion of the experience rating reserve account of the transferring employer which is attributable solely to the portion of the business acquired be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the close of the quarter within which the succession occurred.

3. Upon receiving the request from both the transferring and acquiring employers for the transfer of the portion of the experience rating reserve account of the transferring employer attributable solely to the portion of the business acquired by the acquiring employer, the Commission shall require that the transferring employer supply the Commission with the applicable percentage(s), and if necessary, any taxable wages that are to be used in determining the part of the experience rating reserve account to be transferred.

4. The Benefit Experience Record shall be transferred from the predecessor to the successor as follows:

a. The payroll (taxable wages) for the quarters used in the rate computation periods(s).

b. The contributions credited to and the benefits charged to the predecessor's experience rating reserve account for the period beginning with the year in which the severable portion began operating and ending on June 30 preceding its transfer, and

c. The contributions credited to and the benefits charged to the predecessor's experience rating reserve account subsequent to June 30th and prior to the date of the transfer of the severable portion of the business.

5. In the event that a separate subsidiary experience rating account has been maintained by the Commission with respect to the distinct and severable portion of the business transferred for the entire period of the operation of such portion, Sub-Items C.3 and C.4, above, will not apply. The total contributions paid, benefits charged, reserve balance, and payroll (taxable wages) appearing on such subsidiary account, together with those Items entered on that account from the preceding June 30th up to the date of the partial transfer of business will be transferred from the experience rating reserve account of the transferring employer to the experience rating reserve account of the acquiring employer. Attention is directed to Sections 41-31-100 through 41-31-120 of the South Carolina Employment Security Law as to the conditions under which total or partial transfer of experience

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rating reserve accounts can take place and as to the provisions for rate computations upon such transfer. The law directs that no partial transfer of an experience rating reserve account may be made unless requests are submitted to the Commission by both the transferring and the acquiring employers.

47-18. Workers to Procure Social Security Account Numbers.

A. Each employer shall ascertain the Social Security Account Number of each worker employed by him in employment.

B. Each worker who is engaged in employment for an employer, but who does not have a Federal Social Security Account Number shall file an application therefore not later than one week after the effective date of this regulation, or not later than one week after the first day on which he is engaged in employment for an employer, whichever occurs later. It shall be the duty of employers to procure the appropriate forms of application for Social Security Account Numbers and to furnish such application forms to each worker in their employ who does not have a Federal Social Security Account Number.

C. If an employer has in his employ a worker who does not have a Federal Social Security Account Number and who has failed to file an application therefore within the period prescribed in Paragraph B of this regulation, such employer shall, not later than two weeks after the effective date of this regulation, or not later than two weeks after the first day in which such employer employed such worker, whichever occurs later, file an application for a Federal Social Security Account Number for such worker. A worker who is engaged in employment for an employer and who does not have a Federal Social Security Account Number, shall not be relieved from his duty to file an application for a Federal Social Security Account Number by reason of his employer's having filed an application for him.

D. Applications for Social Security Account Numbers shall be filed and the numbers obtained in accord and compliance with the procedures of the Social Security Administration appertaining thereto.

47-19. Separation Notices.

A. Notice of Filing:

1. A copy of each initial or additional claim filed by a worker will be mailed by his local Commission office to his last employer regardless as to whether the latter is liable or non-labile under the Act.

2. The employer will fill in the information called for on the back of the copy of the initial claim form received by him and return the same to the address of the office shown thereon so as to reach such office no later than the seventh (7th) day from the date the claim was filed.

3. A liable employer other than the last separating employer may be sent a form UCB-214, Request to Employer for Separation Information. This form requests separation information concerning the former worker. The employer shall furnish separation information on Form UCB-214 so that it will reach the office of the Commission not later than nine (9) calendar days from the date such form is mailed to him by the Commission.

4. A failure to respond in a timely fashion as set forth in A2 and A3 may result in the separation information not being considered in rendering an initial determination on the claim.

B. Mass Separations:

1. The term "mass separation" means a separation (permanently, or for an indefinite period), of ten or more workers employed in a single establishment at or about the same time and for the same reason; provided however, that the term "mass separation" shall not apply to separations for regular vacation periods as defined in the Act and approved by the Commission.

2. In cases of mass separations the employer, shall, for each individual affected, file with the Commission office nearest the worker's place of employment, or with such office nearest employee's residence, Form UCB-113, setting forth such information as is required thereby; such form shall be filed not later than eight (8) calendar days, exclusive of Sundays and holidays, after such separation.

C. Notice of Unemployment Due to a Labor Dispute:

1. In all cases of unemployment due to a labor dispute the employer shall follow the procedure set forth in 47-21(D).

D. In all cases of initial claims, additional claims or requests for reinstatement of benefits, where a claimant has been separated from the employ of a non-labile employer, the last covered (liable) employer by whom the claimant was employed will be requested to furnish information relative to the separation of the claimant from employment with such covered (liable) employer or as to any offer of work made to the claimant by such covered (liable) employer in accordance with 47-23 of these regulations subsequent to the separation of the claimant from the employ of such covered (liable) employer. Separation information must be maintained by employers in accordance with 47-14 (A)(2)(e) of these regulations.

47-20. Types of Unemployment.

A. "Non-Job-Attached Unemployment" means the unemployment of any individual in any week during which he performs no services and with respect to which no wages or wages totaling less than his weekly benefit amount are payable to him. Claims for such benefits will be filed directly with the local Commission office by the individual and not an employer. The claimant will register for work with the Commission office and seek full time employment while pursuing such claim for benefits.

B. "Job-Attached Unemployment" means the unemployment of any individual who, during any week, earns less than his weekly benefit amount, is employed by a regular employer, and works less than his normal customary full-time weekly hours because of a lack of full-time work. Any claim for benefits made under this definition will be initiated by the employer and a continuing employer-employee relationship is understood. In connection with any claim for benefits for job-attached unemployment, the claimant shall declare the amount of his earnings [from any source] for the seven day period for which he claims job-attached benefits.

47-21. Filing Claims for Benefits and Registration for Work.

A. Non-Job-Attached Unemployment Claim:

1. Individual Claims:

a. Initial Claims: Any individual may file a request for a determination of his status as an insured worker in order to establish a benefit year for the purpose of claiming benefits or waiting week credit for non-job-attached unemployment. Such request shall be filed at the Commission office nearest the place of his most recent employer or residence, and shall set forth that (1) he is unemployed and (2) he is available for work. Such request, for the purpose of these Regulations, shall be known as an Initial Claim (Form UCB-101). Further, the claimant will be required to register for work with the local Commission office and be available for services.

b. Continued Claims: In order to establish eligibility for benefits or waiting period credit for succeeding weeks of non-job-attached unemployment during any continuous period of non-job-attached unemployment, the claimant shall continue to file as prescribed by the Commission. When so directed, claimants will be required to report, in person, to the local office where they are filing their claim. The claimant will set forth:

- i. That he has not worked or earned wages except as reported,

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- ii. That he has not refused any work offered to him, and
- iii. That he is able and available to accept work and is looking for full-time employment.

2. Mass Claims:

a. Initial Claims: The filing by an employer on Form UCB-113, in accordance with 47-19.B.1, initiates the request for the determination of status as an insured worker for each individual for whom such a form is submitted.

b. Continued Claims: In order to establish eligibility for benefits or waiting period credit for succeeding weeks of non-job-attached unemployment during any continuous period of non-job-attached unemployment, the claimant shall continue to file as prescribed by the Commission. When so directed, claimants will be required to report, in person, to the local office where they are filing their claim. The claimant will set forth:

- i. That he has not worked or earned wages except as reported,
- ii. That he has not refused any work offered to him, and
- iii. That he is able and available to accept work and is looking for full-time employment.

B. Job-Attached Unemployment Claim:

1. Initial Claims: For each job-attached worker for whom a current benefit year has not been previously established and who has one payroll week furnished by his employer with work that constitutes less than the maximum weekly benefit amount during such week, the employer shall promptly prepare Form UCB-114, Low Earnings Report and Claim-Partial Unemployment. The employer may submit this report in a paper format or by any other computer or electronic means the Commission may offer. All information requested on the form or filing medium must be supplied. The employer shall obtain the signature and address of the workers and forward report to the nearest local Commission office, if the paper form is used. Computer or electronic methods of filing should be sent to the Benefits Department at the Central Office in Columbia. The completed, signed Form UCB-114 (or electronic equivalent) shall be credited as a waiting week, if the claimant earned less than such weekly benefit amount during the week covered by the low earnings report.

2. Notification of Eligibility: When a worker is found to be eligible for benefits under a claim filed therefore, the Commission shall notify the employer and the claimant of the weekly benefit amount the claimant will receive if unemployed and otherwise eligible for benefits. Such notice shall state the date on which the benefit year of the claimant will end. The attention of the employer shall be called to the fact that the amount shown is applicable only to claims for any week within the benefit year shown and that the employer is required by regulations to continue to file weekly with the Commission a low earnings report (Form UCB-114 or electronic equivalent) after obtaining the signature of the worker until the unemployment of the claimant ceases or until otherwise notified by the Commission.

3. Notification of Ineligibility: When a worker is found to be ineligible because of insufficient base period wages for benefits under a claim filed therefore, the Commission will notify the claimant by so noting on the copy of the determination, which shall be mailed to him.

4. Continued claims: For any worker for whom a current benefit year has been established and of whose weekly benefit amount the employer has been advised, the employer shall file a low earnings report (or electronic equivalent) for any week during which the worker earns wages but because of lack of full-time work is working less than his normal or customary full-time hours and is earning less than his weekly benefit amount. The employer shall promptly have the worker sign this report and complete the information as called for thereon,

being sure that the worker reports earnings with all other employers or employing units. The form shall then be promptly forwarded to the nearest Commission office or the Central Office, whichever is appropriate. For any week or weeks of job-attached unemployment the employer may file Form UCB-114 (or electronic equivalent) provided the claimant is still attached to such employer and such week of unemployment was due to the inability of the employer to furnish such claimant full-time employment during such week.

5. For any worker for whom a job-attached (form UCB-114 or electronic equivalent) claim is filed by an employer with the reason to maintain the employer-employee relationship, the filing employer shall be considered the bona fide and liable employer for charges resulting from such claim.

C. Reporting As Instructed:

1. When so directed by a representative of the Commission, the claimant must report in person to the office at which he registered for work and is filing his claim for benefits.

D. Labor Disputes:

1. In cases of unemployment due to a labor dispute, the employer shall file with the Commission office nearest the workers' place of employment a notice setting forth the existence of such dispute and the approximate number of workers affected. Such notice shall be filed within two (2) calendar days after the commencement and at the end of the such dispute a notice shall be filed within two (2) calendar days setting forth the end of such dispute.

2. Immediately upon notice by the employer, or upon information received from any other source that unemployment exists because of a labor dispute at any plant or establishment within the area served by it, the local Commission office shall notify the special examiner designated by the Commission in accord with Section 41-35-630.

3. Upon receipt of notice or information that unemployment exists because of a dispute at any plant or establishment within the area served by it, the local Commission office shall obtain brief statements from the employer concerned and from the union, labor organization, or other representative recognized as representing the workers involved. These statements shall include a summary of the facts, a synopsis of the issues involved between the employer and the workers, a listing of the classes, groups, types of workers involved, names of the workers ordinarily attached to the department or establishment where such unemployment exists, together with their addresses and social security numbers, and report the date on which the dispute commenced and the date it concluded if already terminated. The local Commission office shall specifically ask any union, labor organization or other representative recognized as representing the union involved to confirm or to deny the existence of a labor dispute. If there is no recognized representative of the workers, the local Commission office shall so notify the special examiner.

4. The list of names as set forth above shall constitute a request for determination of status as an insured worker for each individual affected thereby. A special examiner designated by the Commission, according to Section 41-35-120, shall make a determination as to whether or not such unemployment exists because of a labor dispute, and for seven (7) calendar days thereafter from the first day of unemployment.

5. The filing of the list of names provided for in Sub-Items 3 and 4 of this regulation shall not deny any worker the right to file his claim for benefits in the usual manner and to have the same passed upon as otherwise provided by law.

6. In order to establish waiting week credit or continued eligibility for benefits for succeeding weeks of unemployment during any period of unemployment, an affected individual shall report when so directed by a representative of the Commission and file a continued claim for benefits as prescribed.

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7. In case an apparent difference develops as to the facts in the case, the special examiner shall set a hearing, after giving due notice thereof, to determine the facts.

a. In case there is no recognized representation of the workers, or if a recognized representative does not act, the special examiner shall give notice that information has been received indicating that the unemployment existing at such establishment is due to a labor dispute which disqualified otherwise eligible workers for benefits. Any information to the contrary should be presented to the special examiner within five (5) calendar days, or in the absence of any such information, the special examiner shall make a formal determination to this effect.

8. In giving either of the notices required in the preceding paragraph, the special examiner shall advise the local Commission office, the employer concerned, and the representative of the workers involved of the time and place of hearing. If there is no recognized representative of the workers or if the organized representative will not act, the special examiner shall notify the local Commission office and the employer of the time and place of hearing. Similar notices shall be prepared and posted by the local Commission office in conspicuous places that are accessible to the workers involved. If the special examiner shall determine the same to be necessary he shall advertise the notice in a newspaper generally circulated in the community where such labor dispute is in progress. The notice shall also be furnished directly to the claimants in those cases where individual claims are filed.

9. After a hearing or without a hearing if none is required by this regulation, the special examiner shall issue an initial determination as to whether or not unemployment exists or existed because of a labor dispute. In the event the ruling is that unemployment is due to a labor dispute the special examiner shall determine the duration thereof and shall specify the application of the disqualification provision of Section 41-35-120(d) with respect to the claims of individuals affected by Sub-Items 3, 4 and 5 of this regulation.

a. Should the special examiner determine that unemployment does exist because of a labor dispute still in progress, supplementary determinations shall be issued as may be required by any material change in the facts or a cessation of the dispute. Sub-Items 3, 8 and 9 of this regulation shall also be applicable to such supplemental determination.

E. Effective Dates of Claims:

1. Every new claim, additional claim, or reinstatement filed to establish or reestablish a claim for unemployment compensation must have an effective date. This will be the date from which benefits may be claimed. The effective date of claims shall be the Sunday prior to the date the claim was filed. Transitional claims will be effective the day after the prior benefit year-ends.

2. Delay Excused for Cause: A representative of the Commission, for reasons found to constitute good cause for any individual's failure to file a claim timely, may backdate a claim to the appropriate effective date.

F. General Provisions:

1. If a claim is received by mail and in the opinion of the Commission the reporting of the claimant to the nearest Commission office or point of itinerant service is not impractical, the claimant shall so report in filing all succeeding claims.

2. Change of Address: Each claimant, upon changing his address, shall immediately notify the Commission office at which he has last registered of such change of address, giving both the old and the new addresses.

47-22. Method of Paying Benefits.

Benefits shall be paid by the Commission from its Benefit Payment Account as the Commission may prescribe.

47-23. Offers of Work.

A. Section 41-35-120(c) directs that a claimant may be disqualified from the receipt of benefits should he fail without good cause to apply for available suitable work, when so directed by the employment office or the Commission; or should he refuse to accept available work when offered him by the employment office or the employer; or should he decline to return to his customary self-employment (if any) when so directed by the Commission.

B. A written offer of work made directly by an employer shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available and suitable work unless the employer submits a copy of such an offer to the Commission together with a certification that it was either received and refused by the claimant, or that it was directed by registered or certified mail to the last known address of the claimant and that no response was made by the claimant; Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Commission within seven (7) calendar days after such offer was made.

C. An oral offer of work may be made directly by an employer but before a claimant shall be disqualified to receive benefits by reason of his failure to accept, without good cause, available suitable work so offered, a sworn statement shall be submitted by the employer to the Commission setting forth that the offer of work was made directly to the claimant, the nature of the work offered, the wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of the employment, the time and place the claimant should have reported for duty, and any reason given by the claimant for his refusal to accept the work; Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Commission within seven (7) calendar days after such offer was made.

47-24. "Week" Defined.

A. Week of Non-Job Attached Unemployment:

1. Except as otherwise provided in Item 2 of this Regulation, a week of non-job attached unemployment with respect to any individual shall consist of the calendar week of unemployment beginning with the Sunday prior to the day such individual files such request.

2. A week of unemployment of an individual affected by a mass separation, or by a strike, lockout, or other labor dispute with respect to which a notice is filed by the employer as provided in Sub-Item 47-21.A.2 and Item 47-21.D, shall consist of the calendar week of unemployment beginning with the Sunday prior to the mass separation, strike, lockout, or other labor dispute, and thereafter, the calendar week of unemployment following any week of unemployment provided the individual files as required by Sub-Items 47-21.A.2.b and 47-21.D.6.

B. Week of Job Attached Unemployment:

A week of job-attached unemployment of an individual shall consist of the calendar week of unemployment beginning with the Sunday of the week for which his employer is filing or his pay period week. With respect to an unemployed individual whose wages are not paid on a weekly basis, a week of unemployment shall consist of a calendar week, provided that the Commission may, upon its own initiative or upon application, prescribe to any individual or group of individuals such other 7-consecutive-day period as it may find appropriate, provided that notice of job attached-unemployment is given to the Commission office or Benefit Department as is required in Item 47-21.B.

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C. Week of Disqualification:

With respect to a period of disqualification under Section 41-35-120 as amended, "Week" means a calendar week or pay period week as defined in Items 47-24.A and 47-24.B.

47-25. Wages Payable in Quarter.

A. "Quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

B. The terms "wages earned for employment" and "wages payable" in connection with any particular period shall be deemed to mean wages paid within that period in accordance with Section 41-27-380.

47-26. Payment of Benefits to a Deceased Claimant.

A. Pursuant to the authority of Section 41-35-30 of the South Carolina Employment Security Law and in order to provide for the payment of benefits in those cases where the claimant has filed a valid claim and has compensation payable to him for weeks of unemployment and who dies prior to receiving such compensation, the Commission adopts the following regulation:

1. If there is an executor or administrator appointed within sixty (60) days, payment must be made to said executor or administrator.

2. If there is no executor or administrator appointed within sixty (60) days, payment may be made upon written application as hereinafter set out:

a. To the surviving wife or husband; and if there be none

b. To the minor children; and if there be none

c. To the adult children; and if there be none

d. To parents of the deceased; and if there be none

e. To any person or persons who were dependent upon the deceased; and if there be no person within the foregoing classification, said payment to the deceased shall lapse and revert into the unemployment trust fund.

3. In the event payment is made to minor children as provided in Sub-Item A.2.b of this Regulation, the payments may be made to any responsible adult with whom minor children are making their home, upon a written pledge to use said payment for the benefit of the said minors, will be considered proper and legal payment to the said minor children without the requirement of formal appointment of a guardian.

B. Written application for payment of such benefits must be made within six months after the death of the decedent, provided that the Commission upon good cause shown may extend the time for filing application.

C. Such application must be made in the form of an affidavit, in which the affiant sets forth his relationship to the deceased, and the reasons he is eligible for precedence.

D. Such affidavit should be supported by a copy of the death certificate of the deceased claimant, and an affidavit of an uninterested party that he knows or is informed and believes that the information given by the first affiant is true and correct.

E. The burden of initiating a claim for compensation due and payable to a deceased claimant and of proving identity and the right to payment shall rest upon the individual making such application.

F. All benefits issued directly to the deceased shall be returned to the Commission for cancellation before any funds shall be paid in lieu of such benefits. Provided, however, that where such benefits cannot be obtained that an explanation to the satisfaction of the Commission is in order.

G. Upon the return of such benefits for cancellation in satisfaction of the requirements of those regulations, payment may be made to the proper party with notation thereon of claimant's name and Social Security Number.

H. Payments made in accordance with this regulation shall for all purposes be deemed to have been made to all persons equitably entitled thereto.

47-27. Notice of Benefit Payments.

When benefit payments that are to be charged against said employer's account begin to any claimant, the employers shall be automatically notified.

47-28. Military Service.

A. This regulation shall apply only to those individuals who have volunteered or enlisted or who have been called into any branch of military service or any organization affiliated with the defense of the United States or the State of South Carolina.

B. The first benefit year following the termination of his military service shall be the one year period beginning the Sunday prior to the day of making a request for determination of insured status.

C. With respect to the benefit year as defined in Paragraph B hereof, the base period for such individual shall be the first four of the last five completed calendar quarters immediately prior to the filing of the claim. Military wages shall be assigned based on the requirements of Unemployment Compensation for Ex-Service members (UCX), Title XV of the Social Security Act.

D. Any individual, as provided for above, shall be ineligible for benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under another unemployment compensation law of the United States.

E. All other provisions of the South Carolina Employment Security Law not inconsistent with the above and foregoing provisions shall apply to the payment of claims for benefits filed hereunder.

47-29. Payment of Benefits to Interstate Claimants and the Combination of Wage Credits.

A. The following regulations shall govern the South Carolina Employment Security Commission, in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

1. Definitions, as used in this regulation, unless the context clearly requires otherwise:

a. "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.

b. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable States in which claimant is not residing. The term "interstate claimant" shall not include an

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individual who customarily commutes from a residence in an agent state to work in a liable state unless the Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

c. "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

d. "Agent state" means any state in which an individual files a claim for benefits from another state.

e. "Liable state" means any state against which an individual files, through another state or by other means as provided by the liable state, a claim for benefits.

f. "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

g. "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

B. Registration for Work:

1. Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

2. Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

C. Benefit Rights of Interstate Claimants:

1. If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purpose of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

2. The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed.

D. Claim for Benefits:

1. When it is determined by the Agent state that a South Carolina Interstate claim is in order, the initial claim for benefits shall be filed by interstate claimants via the Remote Interstate Claims Unit. The Agent state shall provide to the claimant the telephone number or filing procedures as defined in the online Interstate Handbook. When acting as the Agent state, the Commission shall take Interstate claims on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan or refer to the appropriate liable state as described in the on-line Interstate Handbook. Claims shall be filed in accordance with the type of week in use in the liable state.

2. South Carolina Continued Claims shall be filed via the Interactive Voice Response System. The Commission shall provide a mail packet to the claimant with the telephone number and/or any other filing means as provided by the Commission.

a. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances, which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

b. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim, which is filed within the time limit applicable to such claims under the law of the Agent state.

E. Determinations of Claims:

1. The Agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

2. The Agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The Agent state shall not refuse to take an interstate claim.

3. When acting as the liable state, the Commission shall conduct its own investigation as to the eligibility of the claimant and issue adjudication.

F. Appellate Procedure:

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the Agent state.

G. Extension of Interstate Benefit Payments to Include Claims Taken In and For Canada. This regulation shall apply in all its provisions to claims taken in and for Canada.

H. Wage-Combining.

1. The Commission subscribes to the Interstate Plan for Combining Wages (Basic Plan and Extended Plan) in accordance with Section 41-29-140, Code of Laws of South Carolina, 1976, for the administrative cooperation with other participating states for the payment of combined wage claims to interstate claimants.

a. The Basic Wage-Combining Plan is adopted to establish a system whereby an unemployed worker not eligible for benefits in any one state may, through combining of wages in more than one participating state, become eligible for benefits.

b. The Extended Wage-Combining Plan is adopted to establish a system whereby an unemployed worker having sufficient base-period wages to qualify for less than maximum annual unemployment insurance benefits in one or more participating states and insufficient base-period wages to qualify for benefits in one or more other participating states, may increase the benefits to which he is entitled by combining wages in one of the states in which he has sufficient base-period wages with base-period wages in all states in each of which he has insufficient wages.

2. The Plan for Combining Wages shall be administered in accordance with uniform Interstate Benefit Payment Procedures for combining wages.

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I. Termination of Combining Wages:

Combining of wages terminates upon the termination of the benefit year in the paying state or at such time as re-determination of benefit rights becomes necessary under the law of the paying state.

J. Relation to Interstate Benefit Payment Procedures:

Whenever this Plan applies, it shall supersede any inconsistent provisions of the Interstate Benefit Payment Plan and the Regulations there under.

47-30. Meaning of Terms.

Unless the context provides otherwise, terms used in rules, regulations, interpretations, forms and other official pronouncements issued by the Commission shall, with respect to all terms which are defined in the Act, be construed in the sense in which they are therein defined.

47-31. Public Employment Office.

The term "public employment office" as used in the South Carolina Employment Security Law with respect to the payment of benefits and as used in each rule, regulation, instruction, procedure or other matter promulgated by the Commission pursuant to the South Carolina Employment Security Law shall be construed to mean a free public employment office operated by the state or the United States Employment Service.

47-32. Time for Filing of Continued Claims (Non-Job Attached).

A. Claimants for unemployment compensation benefits shall be required to report and file claims weekly in a timely manner and in accordance with such procedures as the Commission may adopt unless the Commission shall prescribe for the bi-weekly filing of claims, as set out below. A week claimed is considered timely if received within fourteen (14) calendar days of the claim week ending date. The claims representative in the Commission office may accept any late filing of a continued weekly claim for good cause shown.

B. The Commission may at any time direct that claimants for unemployment compensation benefits shall be required to report and file claims bi-weekly in such manner and in accordance with such procedure as the Commission may adopt. The following provisions shall apply during any period with respect to which the Commission directed the bi-weekly filing of claims.

1. All bi-weekly claims filed on the date specified for claimant's reporting shall be deemed to have been taken for the period of unemployment covered by the claim.

2. Delay may be excused for cause in accordance with the provisions of Sub-Item 47-21.E.2 for not exceeding fourteen (14) calendar days following the date specified for the claimant's reporting.

3. The provisions of Sub-Items 47-21.A.2 and C.1 are also amended to allow bi-weekly reporting.

4. Any claimant who returns to work on or before his next scheduled bi-weekly personal reporting date may file with the local office, by mail, a report of "Return to Work," and such report shall be deemed a continued claim for the intervening preceding week or weeks.

5. All portions of Commission regulations in conflict with the provisions of this regulation are hereby suspended.

47-33. Employer Elections to Cover Multi-state Workers.

A. Relation to Subscribing States:

1. The following regulation, adopted under Section 41-27-550 of the Employment Security Law, shall govern the Employment Security Commission of South Carolina in its administrative cooperation with other States subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as “the arrangement”.
Definitions: As used in this regulation, unless the context clearly indicates otherwise:

a. “Jurisdiction” means any state of the United States, the District of Columbia, Puerto Rico, Canada, or, with respect to the Federal Government, the coverage of any Federal unemployment compensation law:

b. “Participating jurisdiction” means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

c. “Agency” means any officer, board, commission, or other authority charged with the administration of the Employment Security Law of a participating jurisdiction;

d. “Interested jurisdiction” means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and “interested agency” means the agency of such jurisdiction;

e. “Services ‘customarily performed’ by an individual in more than one jurisdiction” means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

B. Submission and Approval of Coverage Elections Under the Interstate Reciprocal Coverage Agreement:

1. Any employing unit may file an election on a form provided by the Commission to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.

a. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which any part of the individual’s services are performed;

b. The individual has his residence; or

c. The employing unit maintains a place of business to which the individual’s services bear a reasonable relation.

2. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose Employment Security Law the individual(s) in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency, may before taking such action, require from the electing employment unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

3. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the employing unit of its action and of its reasons therefore.

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4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part, or is disapproved by some agencies, the electing employing unit may withdraw its election within ten calendar days after being notified of such action.

C. Effective Period of Elections:

1. Commencement: An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

2. Termination:

a. The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in Sub-Item 1, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this regulation ceases to apply to any individual under Sub-Items 1 or 2, the electing unit shall notify the affected individual accordingly.

D. Reports and Notices by the Electing Unit:

1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose Employment Security Law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

E. Approval of Reciprocal Coverage Elections:

The Employment Security Commission of South Carolina hereby delegates to its Deputy Executive Director for Unemployment Insurance, authority to approve or disapprove reciprocal coverage elections in accordance with this regulation.

47-34. Notice of Benefit Determination and Appeal Rights.

Each notice of benefit determination, which is required to be furnished, shall in addition to stating the decision and its reasons include a notice specifying the parties appeal rights. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the determination and the period within which an appeal may be taken.

47-35. Benefits Payable Under Title XV of the Social Security Act, as amended.

A. Pursuant to Section 41-29-140, S. C. Code--1976, as amended, the Commission has entered into an Agreement with the Secretary of Labor to act as agent of the United States in the administration of Title XV of the Social Security Act, as amended, which provides for the payment of unemployment compensation benefits to Federal employees (UCFE--Unemployment Compensation for Federal Employees) and ex-service members (UCX--Unemployment Compensation for Ex-Service members); to cooperate with the Secretary and with other state agencies in making such payments; and to pay compensation under Title XV to individuals entitled thereto in the same amount, on the same terms, and subject to the same conditions as compensation would be payable to such individuals under the state Unemployment Compensation Law, if such individuals' federal service and federal wages had been included as employment and wages under the South Carolina Law.

B. Distribution of Cost of Benefit Payments under state and Federal Programs.

A UC, UCFE, or UCX claimant who has exhausted his benefits in a previous benefit year and has been held ineligible under Section 41-35-50, South Carolina Code--1976, as amended, will not be eligible for benefits in a subsequent benefit year under any program until the conditions of Section 41-35-50 have been satisfied. Benefits paid to a UC, UCFE, or UCX claimant who is ineligible for benefits under Section 41-35-50 and subsequently earns wages in employment will be charged as follows:

1. If an otherwise eligible state UC claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a state covered employer, his claim will be paid and charged to the covered employer's account.

2. If an otherwise eligible state UC claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a Federal agency, his claim will be paid and charged to the State UC Trust Fund. (No employer's experience rating account will be charged.)

3. If an otherwise eligible UCFE or UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount in Federal employment or from a state covered employer as defined in Section 41-27-210, his claim will be paid and benefits will be charged to the base period Federal employers' account.

4. If an otherwise eligible joint UC-UCFE or joint UC-UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a state covered employer, the state portion of the claim will be charged to the last (bona-fide) employer's account and the Federal portion will be charged to the base period Federal employer.

5. If an otherwise eligible joint UC-UCFE or joint UC-UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a Federal agency, the state portion will be charged to the State UC Trust Fund (no employer's account will be charged) and the Federal portion will be charged to the base period Federal employers' account.

6. If the normal base period of the UCX claim contains UCFE Federal wages and UCX military wages, the UCX portion of the claim will be charged to the appropriate branch of service account and the Federal portion will be charged to the base period Federal employer.

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7. The amount of benefits to be paid to a joint UC-UCFE or joint UC-UCX claimant, wherein wages are reported, for a week of unemployment as defined in regulation 47-20, shall be computed on the basis of the joint maximum weekly benefit amount. The charge to the state portion of the claim will be charged to the last (bona-fide) employer's account and the Federal portion will be charged to the base period Federal program based on the applicable portion of base period wages.

47-36. Review of Rulings With Respect to the Status, Liability, and Rate of Contributions of an Employer or Employing Unit.

A. At the request of an employing unit or employer, the Director of the Unemployment Insurance Division shall review any administrative determination with respect to the status, liability, and rate of contributions applicable thereto, provided that such request is made within thirty (30) calendar days of the date of mailing such determination, and the Director shall issue an administrative ruling in affirmation, modification, or reversal of such determination.

B. An administrative ruling by the Director of the Unemployment Insurance Division concerning the status, liability, or rate of contributions of an employing unit or employer (whether issued initially or in accordance with paragraph A, supra), will be reviewed by the Commission upon the appeal of such employing unit or employer, PROVIDED:

1. The appeal be made in writing and mailed or delivered to the Commission not more than thirty (30) calendar days after the date of mailing of such administrative ruling, and

2. The appeal contains a clear and concise statement of the reasons therefore.

C. The Commission shall designate a hearing officer employed by it to conduct a hearing at a place convenient for the employing unit or employer concerned at which testimony shall be taken and evidence received in the matter.

1. Notice of the hearing shall be mailed by the hearing officer or deputy to the employing unit or employer, directed to its last known address, at least seven (7) calendar days prior to the date of the hearing. The notice shall state the time set for the hearing, together with a brief statement of the question or questions to be determined.

2. The hearing shall be conducted under the same procedure as that provided for the hearing of appeals of claims for benefits. Testimony will be recorded and exhibits will be received into evidence in the same manner. A record shall be prepared consisting of the pertinent ruling or rulings of the Director of the Unemployment Insurance Division, the motion for review by the Commission, a transcription of the testimony, and the documentary evidence and exhibits. This record will be transmitted to the Commission for consideration and determination. A copy of the transcript of testimony will be furnished to any party to the review.

D. The Commission shall give notice of at least seven (7) calendar days of a hearing to be held at its offices in Columbia for the purpose of receiving the oral or written arguments in the case. No further testimony or evidence will be received at this hearing and the Commission shall make its determination on the basis of the record submitted to it by the Appeals Hearing Officer or Field Deputy. A written decision will be issued by the Commission setting forth its findings of fact and conclusions of law in affirmation, modification, or reversal of the administrative ruling or rulings presented for review.

47-39. Joint Account.

A. Two or more "employers" as defined in Section 41-27-200, South Carolina Code of Laws, 1976, as amended, in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest, hereinafter referred to as an "Employer Group," may enter into an agreement with the Commission to establish a joint experience rating account as provided in Section 41-31-20; subject to the provisions of Article 1

of Chapter 31 of Title 41 of the 1976 Code--Rates of Contribution; shall be treated as a separate employer account and subject to the following provisions:

1. A joint account may not be established for a period of less than five (5) years beginning with the first day of the calendar year in which such application for the establishment of such account is approved by the Commission.
2. The contribution rate for an "employer group" shall be computed as of the first day of the first month following the quarter in which the application for establishment of a joint account is approved by the Commission. Such computation shall be based upon the aggregate reserve balances of all the members of the group on the last day of the quarter in which such application is approved and the combined taxable wages paid by all members of the group for the twelve (12) consecutive months extending through the last month of such quarter.
3. No "employer" may become a member of an "employer group" until such employer has satisfied the provision of Section 41-31-40 (24 months of coverage).
4. Separate accounts shall be maintained for each employer in an "employer group" for identification, with such separate accounts being combined only for the purpose of establishing a joint experience rate.
5. No "employer group" shall have a reduced contribution rate when an execution for unpaid contributions is outstanding against one or more members of the "employer group."
6. If a member of an "employer group" acquires the business of an employer, the experience rating reserve balance of the predecessor employer shall be transferred to the separate account of the acquiring employer. The provision of Section 41-31-100 or Section 41-31-110 as applicable shall apply to the "employer group" in accord with Sub-Item thereof.
7. All members of an "employer group" shall remain members until the dissolution thereof. This provision shall also apply to a successor who acquires the business of a member of an "employer group," provided however, if for any reason the business of a member of an "employer group" is discontinued, or if the liability of a member is terminated in accord with Chapter 37 of Title 41 of the 1976 Code, the balance in the reserve account of the discontinued business shall remain a part of the reserve balance of the "employer group" until the dissolution of such "employer group."
8. An "employer group" may be dissolved and the joint account distributed in accord with Section 41-31-120 on the next regular computation date:
 - a. by the parent employer, if each member of the "employer group" is owned or controlled by such parent employer;
 - b. by 50 per cent or more of the employers in the "employer group" each of which has at least a 5 per cent reserve on the date of dissolution.
 - c. Each member of the "employer group" thus dissolved will be considered for the purposes of Section 41-31-120 as the successor to his own business and the employer group will be treated as the predecessor.
 - d. In the event the experience rating reserve of any member of the "employer group" was retained as a part of the reserve balance of the "employer group" upon the discontinuance of business or termination of liability in accord with Chapter 37 of Title 41 of the 1976 Code, the experience rating account of such an employer upon dissolution of the group:
 - i. will be inactivated if the employer ceased to do business;

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ii. will be canceled if the employer terminated liability.

9. Each member of an “employer group” will be responsible for keeping the records and filing the reports required by the Commission with respect to individuals in its employment. Every member of the “employer group” shall be liable individually or collectively for all past due penalties, contributions, and interest of any member and shall be subject to the provisions of Article 3 of Chapter 31 of Title 41 of the 1976 Code.

10. Benefits paid, chargeable to a member of an “employer group” shall be used in computing the experience rate of the “employer group;” however, only the employer to whom benefits are chargeable shall have the right of appeal in accord with the appeals provisions in Article 5 of Chapter 35 of Title 41 of the 1976 Code.

11. No provision in Section 41-31-20 or in this regulation issued pursuant thereto shall be construed as giving any member of an “employer group” any authority over the operation of another member with respect to the administration of the joint “employer group” account.

47-40. Establishment of Joint Account for Parent Employer and One or More Subsidiary Legal Entities Rendering No Employment.

Any parent “employer” which has common control over one or more subsidiary legal entities, furnishes all personnel services for such legal entities, has control over all employees, and pays the wages of all employees performing services for such subsidiary legal entities shall file combined contribution and wage reports quarterly with the Commission and shall have one combined experience rating account inasmuch as such subsidiaries would not be liable by virtue of being an “employing unit” as defined in Section 41-27-220.

47-41. Bonding Requirements for Certain Nonprofit Organizations.

Any nonprofit organization or group of organizations which has become liable for payments of benefits in lieu of contributions and which does not possess title to real property and improvements valued in excess of two million dollars shall be required to post a surety bond, money deposit, or other securities with the Commission to insure the payments in lieu of contributions. Such surety shall be filed with the State Treasurer in accordance with the requirements of that office. A determination relative to the value of real property and improvements of a nonprofit organization or group of organizations will be based on written information supplied by said organization certifying to the value. Such information or evidence shall be in the form of a financial statement or in other form acceptable to the Commission.

The nonprofit organization or group of organizations shall be required to: (1) Post a money deposit; (2) Furnish an indemnity bond with a surety company authorized to do business within the State of South Carolina; or (3) In lieu of an indemnity bond, furnish U.S. Government bonds, obligations of the U.S. Government or obligations fully guaranteed both as to principal and interest by the U.S. Government; obligations of the Federal Intermediate Credit banks, Federal Home Loan banks, Federal National Mortgage Associations and banks for cooperatives and Federal Land banks; obligations of the State of South Carolina or any political subdivision thereof.

The amount of the surety bond, money deposit, securities, or other security shall be 2.7 per cent of the taxable wages paid by a nonprofit organization or group of organizations. Taxable wages paid means wages as defined in Section 41-27-380 of the law for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the Commission.

47-42. Child Support Intercept of Unemployment Benefits.

A. The Commission may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing such claim, whether or not the individual owes child support obligations as defined under Item G. In addition and pursuant to an agreement between the Commission and the state or local child support enforcement agency, the state or local child support enforcement agency shall notify the Commission if a particular individual who has filed a new or continued claim for unemployment compensation at the time of filing such claim owes child support obligations, or if the state or local child support agency advises the Commission that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the Commission shall notify the state or local child support enforcement agency enforcing such obligations that the individual has been determined to be eligible for unemployment compensation.

B. The Commission shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under Item G.

1. the amount specified by the individual to the Commission to be deducted and withheld under this Item, if neither (2) nor (3) is applicable,

2. the amount if any determined pursuant to an agreement submitted to the Commission under Section 454(20)(B)(1) of the Social Security Act by the state or local child support enforcement agency, unless is applicable, or

3. any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process as that term is defined in Section 462(e) of the Social Security Act properly served upon the Commission.

C. Any amount deducted and withheld under Item B shall be paid by the Commission to the appropriate state or local child support enforcement agency.

D. Any amount deducted and withheld under Item B shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

E. For purposes of Items A through D, the term 'unemployment compensation' means any compensation payable under the South Carolina Employment Security Law including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

F. This regulation applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the Commission under this Item which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

G. The term 'child support obligations' is defined for purposes of this regulation as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

H. The term 'state or local child support enforcement agency' as used in this regulation means any agency of this state or a political subdivision thereof operating pursuant to a plan described in Item G.

I. The deductions provided for in this regulation are not an assignment, pledge or encumbrance of any right to benefits which are or may become due or payable for the purposes of Section 41-39-20, South Carolina Code of Laws, 1976.

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J. This regulation shall become effective on October 1, 1982.

47-43. Exclusion of Claims for Extended Benefits in Determining the Rate of Insured Unemployment.

A. The term "Rate of insured unemployment" for purposes of Section 41-35-330, South Carolina Code of Laws, 1976, amended, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular state compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the Commission on the basis of its reports to the U. S. Secretary of Labor, by

2. The average monthly employment covered under Chapters 27 through 41 of Title 41 of the South Carolina Code of Laws, 1976, as amended, of the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

47-44. Limitation on Trade Readjustment Allowances.

Notwithstanding any other provisions of Chapters 27 through 41 of Title 41, South Carolina Code of Laws, 1976, as amended, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this regulation be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

47-45. Prohibition Against the Disqualification From Trade Readjustment Allowances When Enrolled for Approved Training.

A. Notwithstanding any other provisions of Chapter 35 of Title 41 of the South Carolina Code of Laws, 1976, as amended, no otherwise eligible individual shall be denied benefits for any week because he is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of the provisions of this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.

B. For purposes of this regulation, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

47-46. "National Indicator" for Extended Benefits.

The national indicator has been repealed by Section 2401 of the Omnibus Budget Reconciliation Act of 1981 (PL 97-35) and the Extended Benefit period will not become effective as a result of a "national 'on' indicator" or an Extended Benefits period will not be terminated as a result of a "national 'off' indicator" as required by Federal Law.

47-47. "State Indicator" for Extended Benefits.

A. The state indicator for Extended Benefits was changed by Section 2403 of the Omnibus Budget Reconciliation Act of 1981 (PL 97-35) and there is a "state 'on' indicator" for this state for a week, if the

Commission determines, in accordance with the regulations of the U. S. Secretary of Labor and Federal Law that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under these regulations:

1. equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

2. equaled or exceeded five percent; provided, that with respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a "state 'on' or 'off' indicator" for this state beginning or ending any extended benefit period shall be made under this regulation as if:

a. paragraph A. did not contain Sub-Item 1; and

b. the word "five" contained in Sub-Item 2 hereof were "six" except that, notwithstanding any such provision of this regulation, any week for which there would otherwise be a "state 'on' indicator" for this state shall continue to be such a week and shall not be determined to be a week for which there is a "state 'off' indicator" for this state.

B. There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either Sub-Items 1 and 2 of Item A was not satisfied.

C. This regulation shall be applicable for all weeks beginning after September 25, 1982.

47-48. Suitable Work Requirements for Extended Benefits.

For the purposes of Section 41-35-420(2)(d), South Carolina Code of Laws, 1976, as amended, the term "suitable work" means any work which is within the individual's capabilities to perform if the individual cannot furnish satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 41-35-120, South Carolina Code of Laws, 1976, as amended, without regard to the definition specified by this regulation.

47-49. Pension Reductions From Unemployment Benefits.

A. Section 414 of the Multi-employer Pension Plan Amendments Act of 1980 (PL 96-364) provides for the reduction of unemployment benefits by pension payments on a pro-rata basis and notwithstanding Section 41-27-370, South Carolina Code of Laws, 1976, as amended, that in the event an individual has participated in any pension, retirement or retired pay, annuity or other similar plan of the base period employers by having made contributions to such plan, the weekly benefit amount payable to such individual for such week shall be reduced but not below zero,

1. by the prorated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual;

2. by no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer or any other person or organization who is not a base period employer; or

3. by the entire prorated weekly amount of the pension if Item 1 or Item 2 of this regulation does not apply.

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ARTICLE 3.

APPEALS REGULATIONS

47-51. Appeals to Appeal Tribunal.

A. The Presentation of Appeals.

1. The party appealing from an initial determination of a claims adjudicator shall file at the office where the claim was filed or at the office of the Commission in Columbia, South Carolina, a Notice of Appeal on the form provided, setting forth the information required thereon. Copies of the Notice of Appeal shall be mailed to the other interested parties to the initial determination of the examiner which is being appealed.

2. The party appealing from a determination of an adjudicator rendered subsequent to the issuance of an initial determination shall file a Notice of Appeal in like manner and place as is provided for appeal from an initial determination in Appeal Regulation 47-51, A.1 above, which shall be treated in the same manner as is therein provided.

3. The party appealing from a re-determination shall file Notice of Appeal as provided for in Appeal Regulation 47-51, A.1 above, which shall be treated in the same manner as an appeal from an initial determination: Provided That, where there is pending an appeal from an initial determination, such appeal, unless withdrawn, shall likewise constitute an appeal from such re-determination.

4. In cases where Section 68-114(4) of the Act [Section 41-35-120(4)] is involved, and initial determination in the case has been made by a special examiner designated therefore by the Commission, the party appealing from the initial determination of such special examiner shall file a Notice of Appeal in like manner as provided for in Appeal Regulation 47-51, A.1 above, which shall be treated in the manner prescribed in that Regulation.

5. Upon the scheduling of a hearing for an appeal, Notice of Hearing upon the form provided shall be mailed at least seven (7) calendar days prior to the date of hearing, specifying the place and time of hearing, and the hearing official, to all interested parties to the appealed claim.

6. No additional hearings shall be allowed on the same appeal before the Appeal Tribunal except those subject to Appeal Rules 47-51, D.1, 47-51, D.2 and 47-51, C.1-3.

B. Disqualification of Members of Appeal Tribunals.

No person shall serve on an Appeal Tribunal in the hearing of any appeal in which he is interested. Challenges to the interest of any person serving on an Appeal Tribunal may be heard and decided by the Appeal Tribunal, or in its discretion referred to the Commission.

C. Hearing of Appeals.

1. All Appeal Tribunal hearings shall be de novo in nature and conducted informally in conformity with the South Carolina Administrative Procedures Act and in such manner as to ascertain the substantial rights of the parties. The Appeal Tribunal shall include in the record and consider as evidence all records of the Agency that are material to the issues. All issues relevant to the appeal shall be considered and passed upon. Any party to the appeal may present such testimony as may be pertinent to the appeal. Where a party appears in person, the Tribunal shall examine and cross-examine such party and his witnesses, and may examine and cross-examine the witnesses of any opposing party. The Appeal Tribunal with or without notice to any of the parties, may take such additional evidence at the hearing as it deems necessary. After a hearing and prior to actually rendering the decision, the Appeal Tribunal with notice to the interested parties as provided for in Appeal Regulation 47-51,

A.5, may call the parties and any witnesses to appear before it for the taking of such additional evidence as it deems necessary.

2. The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. The stipulations agreed upon shall be included in the record of the case. The Appeal Tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence or hearing arguments, as it deems necessary to determine the appealed claim.

D. Adjournments of Hearings

1. The Appeal Tribunal shall use its best judgment as to when adjournments of a hearing shall be granted, in order to secure all the evidence that is necessary and to be fair to the parties to the appeal.

2. If the appealing party fails to appear at the hearing, the Tribunal may issue a decision on the basis of records of the Agency.

E. The Determination of Appeals.

1. Following the conclusion of hearing of an appeal, the Appeal Tribunal shall, as soon as possible, announce its findings of fact and decision with respect to matters or issues of the appeal. The decision shall be in writing. The Tribunal shall set forth its findings of fact, its decision, and the reasons therefore.

a. In addition to the issues raised by the appealed determination the Tribunal may consider all issues affecting claimant's rights to benefits from the beginning of the period covered by the determination to the date of the hearing.

b. The Appeal Tribunal may pass upon any offer of work complying with Regulation 41-23, separation, or question of availability arising between the filing of an appeal and the Appeal Tribunal hearing in those cases in which the Benefit Department has issued no determinations with respect to such subsequent issues.

c. The Appeal Tribunal may pass upon any issue framed prior to the filing of the appeal or the determination from which the appeal is taken, and with respect to which no determination has been issued by the Benefit Department.

d. The Appeal Tribunal at a hearing may receive and consider appeals from determinations issued subsequent to the determination and appeal giving rise to the hearing, provided such appeals are timely.

e. Sub-Items (a)(b)(c)(d) supra will apply only when the parties are identical or present at the Appeal Tribunal hearing or properly notified of the issue or issues.

2. Copies of all decisions and the reasons therefore shall be mailed to all parties to the appeal, to the Benefits Department, and to the local office at which the claimant filed.

F. Notice of Rights to Appeal from Appeal Tribunal Decisions.

Each benefit appeal decision sent to the parties to an appeal shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which an appeal may be taken.

47-52. Appeals to the Commission.

A. The Presentation of Application for Leave to Appeal to the Commission

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1. Any party aggrieved by the decision of an Appeal Tribunal, may apply for leave to appeal from such decision to the Commission, by filing at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to Commission on the form provided, setting forth the information required thereon and the grounds for the appeal. Such application may be accompanied by reference from the original record of the hearing before the Appeal Tribunal. Copies of the Application for Leave to Appeal shall be mailed to all interested parties to the decision of the Appeal Tribunal.

a. The Commission may grant or deny any Application for Leave to Appeal, filed under Regulation 47-52, A.1, without hearing, or may notify the interested parties to appear before it at a specified time and place for argument upon the application. Notices of such hearing for argument upon application shall be mailed the interested parties to the decision of the Appeal Tribunal at least seven (7) calendar days before the date of the hearing. The Commission shall specify the matters to be heard and the place and time of hearing.

b. Copies of the Commission's decision on any Application for Leave to Appeal shall be mailed to all interested parties to the decision.

c. If leave to appeal to the Commission is granted, the Commission may schedule a hearing. Notice of hearing on the form provided shall be mailed at least seven (7) calendar days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

2. Any interested party to the decision of an Appeal Tribunal, which is not unanimous, may apply for leave to appeal from such decision to the Commission by filing at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to Commission on the form provided setting forth the information required thereon. Such application may be accompanied by reference to or excerpts from the original record of the hearing before the Appeal Tribunal. Copies of the Application for Leave to Appeal shall be mailed to all interested parties to the decision of the Appeal Tribunal.

a. Notice of the Commission's decision to allow the appeal shall be mailed to all interested parties to the decision.

b. The Commission shall schedule a hearing when the appeal is allowed. Notice of Hearing on the form provided shall be mailed at least seven (7) calendar days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

B. Hearing of Appeals.

1. Except as provided in Appeal Regulation 47-52, D for the hearing of appeals removed to the Commission from an Appeal Tribunal, all appeals to the Commission shall be heard solely upon the evidence in the record before the Appeal Tribunal.

2. In the hearing of an appeal upon the record, the Commission may limit the parties to oral argument, or may permit the filing of written argument, or both.

C. The Review of Decisions of Appeal Tribunals by the Commission on Its Own Motion.

1. Within ten (10) calendar days following a decision by an Appeal Tribunal, the Commission on its own motion may remove any decision to its own jurisdiction for review and may affirm, modify, or set aside such decision on the basis of the evidence previously submitted in such case, or may direct the taking of additional evidence.

2. The Commission shall in such cases allow the parties an opportunity to present their views before it with seven (7) calendar days notice thereof to all parties interested.

3. Where the Commission directs the taking of additional evidence, it shall be taken in the manner prescribed for the conduct of hearings on appeals before the Appeal Tribunal, including seven (7) calendar days notice to the parties interested. Upon the completion of the taking of evidence and testimony pursuant to the direction of the Commission, a new decision shall be issued or the case shall be returned to the Commission for its consideration and decision.

D. The Hearing by the Commission on Appeals Ordered Removed to It from an Appeal Tribunal.

1. Any appeal before an Appeal Tribunal, ordered by the Commission to be removed to itself prior to hearing by the Appeal Tribunal, shall be presented, heard, and decided by the Commission in the manner prescribed in Regulation 47-51, C.1, 2, and 3, for the hearing of appeals before the Appeal Tribunal.

2. Any appeals heard by an Appeal Tribunal may, prior to a decision by the Tribunal, be ordered by the Commission to be removed to itself and shall then be presented, heard and decided by the Commission in the manner prescribed in Appeal Regulation 47-52, C.2 and 3.

E. The Decisions of the Commission.

1. Appeals before the Commission may be heard by any two members thereof constituting a quorum. The Commission shall, as soon as possible, announce its findings and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Commission who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Commission, its decision, and the reasons for such decision.

2. If a decision of the Commission is not unanimous, the decision of the majority shall control. The minority may be recorded as dissenting or file a written dissent from such decision, which shall set forth the reasons for failure to agree with the majority.

3. Copies of all decisions and the reasons therefore shall be mailed by the Commission to the interested parties.

47-53. Issuance of Subpoenas.

A. Subpoenas to compel the attendance of witnesses and the production of records for any hearing of an appeal shall be issued by the Commission or its authorized representative, a member of the Commission or an Appeal Tribunal.

B. Subpoenas for witnesses shall be issued only for the witnesses shown to be necessary in the application.

C. Witnesses subpoenaed for any hearing before an Appeal Tribunal or the Commission shall be paid witness and mileage fees by the Commission in accordance with the schedule allowed witnesses in the Court of Common Pleas of the County in which the hearing is held.

47-54. Orders for Supplying Information from the Records of the Agency.

A. Orders for supplying information from the records of the Commission to a claimant or his duly authorized representative, to the extent necessary for the proper presentation of a claim, shall issue only upon application therefore, which shall state, as nearly as possible, the nature of the information desired, and its relevancy to the claim.

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B. In all cases where an order to supply a claimant or his duly authorized representative with information from the records is issued, the party shall be furnished such information.

47-55. Representation Before Appeal Tribunal and the Commission.

A. Any individual may appear for himself in any proceeding before an Appeal Tribunal or the Commission. Any partnership may be represented by any of the partners. An association may be represented by any of the members of such association. A corporation may be represented only by an attorney at law licensed to practice in South Carolina, except that any employee or agent of a corporation may give factual information to the Commission or its Appeal Tribunal. Representatives of labor unions, employee or employer organizations, may appear and give factual information or data which will be pertinent or helpful to the determination of the issues before the Commission or its Appeal Tribunal.

B. The Commission, or the Appeal Tribunal, in its discretion, may refuse to allow any person to represent others in any proceeding before it who it finds is guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the South Carolina Employment Security Law, or the Rules, Regulations, and/or instructions of either the Tribunal or the Commission.

47-56. Inspection of the Decisions of the Appeal Tribunals and the Commission.

A. Originals of all decisions of the Appeal Tribunal and the Commission shall be kept on file at the office of the South Carolina Employment Security Commission, Columbia, South Carolina, and shall be subject to inspection by the parties thereto, or their duly authorized representatives, subject to the provisions of Sections 41-29-150 and 41-29-170 of the Employment Security Law.

B. Copies of the complete file of decisions of Appeal Tribunal and the Commission shall be open to the public for inspection, but such copies shall not reveal the identity of the parties.

47-57. Appeal to the Courts.

A. Any party to the appeal before the Commission who has exhausted his remedies before the Commission may, within such time as specified in the South Carolina Administrative Procedures Act, file a petition with the Court of Common Pleas for the County in which the employee resides or the County in which he was last employed, for a review of the decision of the Commission.

B. The party filing the petition for the review shall serve a copy of the petition upon the Commission by delivering a copy to the Legal Department of the Commission at Columbia, South Carolina.

Fiscal Impact Statement:

Staff anticipate no additional financial impacts upon local governments. Any additional costs to State government (the Employment Security Commission) are not anticipated beyond the resources allowed under the Act.

Document No. 2456
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: Code Section 48-1-60

R. 61-69, *Classified Waters*

Synopsis:

This amendment adds the designation of NDZ, or No Discharge Zone, for marine toilets to the current water use class of the following waters: (1) Keowee Lake, (2) Lake Murray, (3) Lake Strom Thurmond, (4) Lake Wylie, and (5) Broad Creek to protect them from sewage discharges from marine toilets. The Lakes are currently classified Freshwaters (FW) and Broad Creek is currently classified Shellfish Harvesting Waters (SFH).

According to the U.S. Army Corps of Engineers, "J. Strom Thurmond Lake" is the official name for that waterbody. This amendment will make the full name the official designation. Further, among local people and on many maps, J. Strom Thurmond Lake is also known as Clark(s) Hill Reservoir. This amendment includes the name in the Regulation as a cross reference. Similarly, the U.S. Geological Survey (USGS) Map shows that Lake Keowee is the official name for that waterbody. This amendment changes the regulation to reflect such.

Instructions: Amend R.61-69 pursuant to each individual instruction provided with the text of each amendment below.

Add the classification NDZ to each of the waterbodies below, to read:

WATERBODY NAME	COUN- TIES	CLASS	WATERBODY DESCRIPTION AND (SITE-SPECIFIC STANDARD)
BROAD CREEK (NDZ)	Bfrit	SFH	The entire stream tributary to Calibogue Sound
LAKE MURRAY (NDZ)	Nbry,Lxtn, Slda,Rlnd	FW	The entire lake on Saluda River
LAKE WYLIE (NDZ)	York	FW	The entire lake on Catawba River

Delete the following text:

KEOWEE LAKE	Ocne,Pkns	FW	The entire lake
LAKE STROM THURMOND	Mcmk	FW	The entire reservoir on the Savannah River

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Add waterbody names, county names, water classifications, waterbody descriptions, and NDZ classifications, to read:

LAKE KEOWEE (NDZ)	Ocne,Pkns	FW	The entire lake
J. STROM THURMOND LAKE((ALSO CALLED CLARK(S) HILL RESERVOIR)) (NDZ)	Abvl,Mcmk	FW	The entire reservoir on the Savannah River

Add waterbody name, county names, and cross reference description, to read:

CLARK(S) HILL RESERVOIR	Abvl,Mcmk	See J. Strom Thurmond Lake
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Fiscal Impact Statement:

Presently, the owners of boats can discharge partially treated sewage from marine toilets, which may contain still active microorganisms, directly into waters where people are swimming, or fishing, or boating, or near drinking water intakes.

The type of boats (e.g., size, date of manufacture) as well as the type of Marine Sanitation Device (MSD) or toilet (Type I, II, or III) that is required to be installed is regulated by the U.S. Coast Guard. A Type I MSD is a flow-through device where the sewage is filtered through an on-board system, then directly discharged. A Type I MSD disinfects the sewage, reduces the amount of fecal coliform bacteria, grinds the treated sewage, including paper products to produce no floating solids. A Type II MSD provides an advanced form of the same treatment, further reduces the amount of fecal coliform bacteria, and produces no suspended solids. A Type III MSD (holding tank) is designed to prevent the overboard discharge of treated or untreated sewage.

The reclassification of the waters of Lakes Keowee, Murray, Thurmond, and Wylie, and Broad Creek will affect the operation of boats with flow-through MSD's. The use of flow-through MSD's (Types I and II) on these waters will be prohibited. However, boat owners may not necessarily have to retrofit their boats. If implemented, a boat owner may comply by either: (1) not using the marine toilet in these waters; (2) sealing the head when operating in these waters; or (3) retrofitting the boat to prevent overboard releases.

DHEC staff conducted a survey of marina operators to find out how much they charged to pump out a marine toilet. Many marina operators said that the service was free. The most frequent response was a charge of five (5) dollars. Occasionally, the response was ten (10) dollars.

The reclassification will not affect the operation of Type III MSD's. Even now, Type III holding tanks must be pumped out at marinas equipped to receive wastes from marine toilets.

The reclassification will not impose costs to owners and operators of marinas. Initially, ten lakes were considered for designation as “no discharge” zones for marine toilets; however, six did not have the infrastructure to handle the boating traffic. Thus, they were eliminated from consideration at this time. The Department only considered lakes that already had sufficient numbers of marinas with adequate pump-out infrastructure.

Statement of Need and Reasonableness:

This statement was determined by staff analysis pursuant to S.C. Code Section 1-23-115.

DESCRIPTION OF THE REGULATION: Amendment to Regulation 61-69, “Classified Waters”.

Purpose of the Regulation: The purpose of the Regulation is to reclassify the waters of Lakes Keowee, Murray, Thurmond, and Wylie, and Broad Creek to prohibit the discharge of treated sewage from marine toilets. Broad Creek is located at Hilton Head Island, Beaufort County.

This amendment will also amend the names of two waterbodies in R.61-69. According to the Corps of Engineers, J. Strom Thurmond Lake is the official name of that waterbody. This amendment will make the full name the official designation. Further, the amendment will cross reference the name J. Strom Thurmond Lake with Clark(s) Hill Reservoir.

Duke Power Company refers to Lake Keowee in its official filings with the government and in its correspondence. The U.S. Geological Survey (USGS) Map refers to Lake Keowee as its official name. This amendment will change the name to reflect such.

Legal Authority: 1976 S.C. Code of Laws, Section 48-1-60.

Plan for Implementation: Upon approval by the General Assembly and publication in the State Register, this regulation will be implemented as are other regulations.

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

Federal and state laws prohibit the discharge of untreated sewage into the waters of the United States. Effluent from marine toilets is allowed, provided it has undergone some treatment and disinfection.

In some cases, water bodies that are used for intensive recreation, or for drinking water, or used in the propagation of shellfish may need more protection than afforded by the minimum Federal standards.

In those cases, Federal law allows states to completely prohibit discharges from boats if it can be demonstrated to the U.S. Environmental Protection Agency (EPA) that adequate and accessible pump-out facilities are reasonably available to all boats.

DHEC decided to consider all the major lakes for no discharge status provided each had enough marinas with adequate pump-outs to handle the expected boat traffic. In addition, Lake Murray property owners expressed concern over the increasing number of watercraft equipped with marine toilets and the need to protect public health, safety, and welfare. Their concerns are known to members of the House and the Senate who passed Resolutions requesting that DHEC designate Lake Murray as No Discharge Zone for Marine Toilets. Similarly, Hilton Head Island property owners were concerned about treated sewage being discharged into Broad Creek.

If implemented, adverse water quality impacts from boat discharges will be prevented in the Lakes and Broad Creek.

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The location of Lake Strom Thurmond and Lake Keowee are well known to most of the population of the state. The only purpose in revising these names in the Regulations is to be accurate. Otherwise, these changes are minor.

DETERMINATION OF COSTS AND BENEFITS:

Presently, the owners of boats can discharge partially treated sewage from marine toilets, which may contain still active microorganisms, directly into waters where people are swimming, or fishing, or boating, or near drinking water intakes.

The type of boats (e.g., size, date of manufacture) as well as the type of Marine Sanitation Device (MSD) or toilet (Type I, II, or III) that is required to be installed is regulated by the U.S. Coast Guard. A Type I MSD is a flow-through device where the sewage is filtered through an on-board system, then directly discharged. A Type I MSD disinfects the sewage, reduces the amount of fecal coliform bacteria, grinds the treated sewage, including paper products to produce no floating solids. A Type II MSD provides an advanced form of the same treatment, further reduces the amount of fecal coliform bacteria, and produces no suspended solids. A Type III MSD (holding tank) is designed to prevent the overboard discharge of treated or untreated sewage.

The reclassification of the waters of Lakes Keowee, Murray, Thurmond, and Wylie, and Broad Creek will affect the operation of boats with flow-through MSD's. The use of flow-through MSD's (Types I and II) on these waters will be prohibited. However, boat owners may not necessarily have to retrofit their boats. If implemented, a boat owner may comply by either: (1) not using the marine toilet in these waters; (2) sealing the head when operating in these waters; or (3) retrofitting the boat to prevent overboard releases.

DHEC staff conducted a survey of marina operators to find out how much they charged to pump out a marine toilet. Many marina operators said that the service was free. The most frequent response was a charge of five (5) dollars. Occasionally, the response was ten (10) dollars.

The reclassification will not affect the operation of Type III MSD's. Even now, Type III holding tanks must be pumped out at marinas equipped to receive wastes from marine toilets.

The reclassification will not impose costs to owners and operators of marinas. Initially, ten lakes were considered for designation as "no discharge" zones for marine toilets; however, six did not have the infrastructure to handle the boating traffic. Thus, they were eliminated from consideration at this time. The Department only considered lakes that already had sufficient numbers of marinas with adequate pump-out infrastructure.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

This regulation will prohibit the discharge of treated sewage from marine toilets, and enhance and protect waters used for intensive recreation or as drinking water sources.

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

Increasing boat traffic on these waterbodies will increase the potential for user exposure to pathogens.

Document No. 2455
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
 Statutory Authority: S.C. Code Section 48-1-60

R.61-69, *Classified Waters*

Synopsis:

This amendment will reclassify the waters of Paris Mountain in the Enoree River Watershed, that traverse Paris Mountain State Park, from Class Freshwaters (FW) to Class Outstanding Resource Waters (ORW), to protect the outstanding recreational resources of the Park.

Instructions: Amend R.61-69 pursuant to each individual instruction provided with the text of each amendment below.

Add the following waterbody names, counties, classes, and descriptions in alphabetical order, to read:

Waterbody Name	Counties	Class	Waterbody Description and (Site-Specific Standard)
Beaverdam Creek	Gnvl	ORW 563	From the headwaters to Secondary Road
Beaverdam Creek	Gnvl	FW River	From Secondary Road 563 to the Enoree
Buckhorn Creek	Gnvl	ORW	From the headwaters, including Buckhorn Lake, to North Buckhorn Road
Buckhorn Creek	Gnvl	FW River	From North Buckhorn Road to the Enoree
Mountain Creek	Gnvl	FW	The entire Creek to the Enoree River
Unnamed Creek Tributary to Beaverdam Creek	Gnvl	ORW	From the headwaters, including the Reservoir, to Secondary Road 22
Unnamed Creek Beaverdam Creek	Gnvl	FW Creek	From Secondary Road 22 to Beaverdam Tributary to
Unnamed Creek to Mountain Creek	Gnvl	ORW	From the headwaters, including Mountain Tributary Lake, to Mountain Creek
Unnamed Creek (located near Altamont Forest Rd) Tributary to an Unnamed Tributary to Mountain Creek	Gnvl	FW	The entire Creek

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Fiscal Impact Statement:

There are no anticipated costs to the State and this regulation does not impose any mandates on local governments. This regulation will protect the waters of Paris Mountain and the State Park from discharges from domestic, industrial, and agricultural waste treatment facilities.

Statement of Need and Reasonableness:

This statement was determined by staff analysis pursuant to S.C. Code Section 1-23-115.

DESCRIPTION OF THE REGULATION: Amendment to Regulation 61-69, *Classified Waters*.

Purpose of the Regulation: The purpose of the Regulation is to reclassify the waters of Paris Mountain in the Enoree River watershed, that traverse Paris Mountain State Park from Class Freshwater (FW) to Class Outstanding Resource Waters (ORW) to protect an outstanding recreational resource.

The water use classifications in R.61-69 apply to every waterbody in the state, even if it is unnamed in the Regulation. In such cases where a waterbody is unnamed, the water use classification of the waterbody to which it is tributary applies. The waters of Paris Mountain are unnamed in the Regulation. They are tributary to the Enoree River which is classified FW. Therefore, the waters of Paris Mountain are currently classified FW.

Legal Authority: 1976 S.C. Code of Laws, Section 48-1-60.

Plan for Implementation: Upon approval by the General Assembly and publication in the State Register, this regulation will be implemented as are other regulations.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: The ORW designation is reserved for waters which possess exceptional recreational or ecological importance. Typically, these waters are located on protected lands such as national or state parks or wildlife refuges, or support threatened or endangered species, or support a commercial fishery, or have value for scientific research.

The regulation is needed to protect outstanding recreational waters that are part of the State Park system. It is a reasonable means of protecting the resource for 300,000 yearly visitors who use the waters for fishing, swimming, and boating.

The chief expected benefit is that the waters of Paris Mountain that supply the State Park with recreational waters will be protected from discharges from domestic, industrial, and agricultural waste treatment facilities.

DETERMINATION OF COSTS AND BENEFITS: This regulation is an amendment of Regulation 61-69. There are no anticipated costs to the State, and this regulation does not require or impose any mandate on local governments.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: The regulation recognizes the outstanding recreational waters of Paris Mountain. It will protect the public health, safety, and welfare. By law, permitted wastewater discharges into waters designated ORW of Paris Mountain and the State Park in the Enoree River watershed will be prohibited.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The headwaters begin on the steep, heavily vegetated, slopes of Paris Mountain. These

small streams are the only source of water for the Park’s major lakes- Park Lake, Mountain Lake, and the Reservoir. Without this regulation, these high quality streams and lakes would not be adequately protected.

Document No. 2506
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-30 through 48-1-60.

61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*

Synopsis:

The United States Environmental Protection Agency (USEPA) in accordance with Section 112 of the Clean Air Act as amended in 1990, is required to issue emission standards for all major sources of the 188 listed hazardous air pollutants. On July 16, 1992 [57 FR 31576], the USEPA published an initial list of source categories for which air toxics emission standards are to be promulgated. By the year 2000, the USEPA must develop rules for all of these categories that require maximum achievable reduction in emissions, considering cost and other factors. These rules are generally known as “maximum achievable control technology” (MACT) standards. On June 26, 1995 [60 FR 32913], the USEPA granted full approval to the State of South Carolina under section 112(l)(5) and 40 CFR 63.91 of the State’s program for receiving delegation of section 112 standards that are unchanged from Federal rules as promulgated.

The Department amended R.61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP)* of the Air Pollution Control Regulations and Standards, R.61-62, by adding a list of MACT standards for which prior delegation was granted. These regulations were incorporated into R.61-62.63 by reference and the title of the regulation was revised to *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*. Since this revision is consistent with Federal requirements, legislative review was not required. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of Proposed Revisions

SECTION CITATION:	EXPLANATION OF CHANGE
TITLE	Title is revised.
TABLE OF CONTENTS	Table is revised.
SUBPART B	Minor corrections are made throughout this subpart B.
NOTE	Note is added prior to subpart C.
SUBPARTS C - E	Subparts C through E are added and reserved.
SUBPARTS F - I	Subparts F through I are added and incorporated by reference.
SUBPARTS J, K	Subparts J and K are added and reserved.
SUBPARTS L - O	Subparts L through O are added and incorporated by reference.
SUBPART P	Subpart P is added and reserved.
SUBPARTS Q - U	Subparts Q through U are added and incorporated by reference.

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SUBPART V	Subpart V is added and reserved.
SUBPARTS W - Y	Subparts W through Y are added and incorporated by reference.
SUBPART Z	Subpart Z is added and reserved.
SUBPARTS AA - EE	Subparts AA through EE are added and incorporated by reference.
SUBPART FF	Subpart FF is added and reserved.
SUBPARTS GG - LL	Subparts GG through LL are added and incorporated by reference.
SUBPART MM, NN	Subparts MM and NN are added and reserved.
SUBPARTS OO - WW	Subparts OO through WW are added and incorporated by reference.
SUBPART XX	Subpart XX is added and reserved.
SUBPART YY	Subpart YY is added and incorporated by reference.
SUBPART ZZ - BBB	Subparts ZZ through BBB are added and reserved.
SUBPARTS CCC - EEE	Subparts CCC through EEE are added and incorporated by reference.
SUBPART FFF	Subpart FFF is added and reserved.
SUBPARTS GGG - JJJ	Subparts GGG through JJJ are added and incorporated reference.
SUBPART KKK	Subpart KKK is added and reserved.
SUBPARTS LLL - NNN	Subparts LLL through NNN are added and incorporated reference.
SUBPART OOO	Subpart OOO is added and reserved.
SUBPART PPP	Subpart PPP is added and incorporated by reference.
SUBPARTS QQQ - SSS	Subparts QQQ through SSS are added and reserved.
SUBPART TTT	Subpart TTT is added and incorporated by reference.
SUBPART UUU	Subpart UUU is added and reserved.
SUBPART VVV	Subpart VVV is added and incorporated by reference.
SUBPART WWW	Subpart WWW is added and reserved.
SUBPART XXX	Subpart XXX is added and incorporated by reference.

Text of Amendment:

R.61-62.68, will be replaced in its entirety to read:

SOUTH CAROLINA

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

REGULATION NUMBER 61-62.63

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) FOR SOURCE CATEGORIES

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Subpart M, 63.320 - 63.325.	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart N, 63.340 - 63.347.	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
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**Subpart A
(Reserved)**

**Subpart B
Constructed and Reconstructed Major Sources**

Section 63.40 - Applicability

(a) Applicability. The requirements of Sections 63.40 through 63.44 shall apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants (HAP) after the effective date of this subpart unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) of the Act and incorporated in 40 CFR Part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of section 112(g)(2)(B) in the State.

(b) Exclusion for electric utility steam generating units. The requirements of this subpart do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the Act.

(c) Relationship to local requirements. Nothing in this subpart shall prevent a local agency from imposing more stringent requirements than those contained in this subpart.

(d) Exclusion for stationary sources in deleted source categories. The requirements of this subpart do not apply to stationary sources that are within a source category that has been deleted from the source category list pursuant to section 112(c)(9) of the Act.

(e) Exclusion for research and development activities. The requirements of this subpart do not apply to research and development activities, as defined in Regulation 61-62.63, Section 63.41.

(f) Synthetic Minor Provisions. Any “affected source,” as defined by Regulation 61-62.63, Section 63.41, may request to use federally enforceable permit conditions to limit the source’s potential to emit and become a synthetic minor source.

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(1) An affected source desiring to be a synthetic minor source shall provide a written request to the Department for a federally enforceable construction permit conditioned to constrain the operation of the source, along with a completed construction permit application package. The construction or reconstruction of the source shall not commence until the source has received an effective permit to construct.

(2) The enforceable permit conditions provisions of S.C. Regulation 61-62.1, Section II.G.4 shall apply to synthetic minor source permits.

(3) The public participation procedures of S.C. Regulation 61-62.1, Section II.G.5. shall apply to synthetic minor source permits.

(4) The emergency provisions of S.C. Regulation 61-62.1, Section II.G.6. shall apply to synthetic minor source permits.

(5) The permit application provisions of S.C. Regulation 61-62.1, Section II.G.8. shall apply to synthetic minor source permits.

Section 63.41 - Definitions

Terms used in this subpart that are not defined below or in Regulation 61-62.1, Section I, have the meaning given to them in the Clean Air Act and in 40 CFR Part 63, Subpart A.

(a) "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(b) "Affected source" means the stationary source or group of stationary sources which, when fabricated (on site), erected, or installed meets the definition of "construct a major source" or the definition of "reconstruct a major source" contained in this subpart.

(c) "Affected States" are :

(1) The States of Georgia and/or North Carolina if, as determined by the Department, their air quality may be affected by a MACT determination made in accordance with this subpart; or

(2) Any portions of the State of Tennessee whose air quality may be affected and that are within 50 miles of the major source for which a MACT determination is made in accordance with this subpart.

(d) "Available information" means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the MACT determination by the Department:

(1) A relevant proposed regulation, including all supporting information;

(2) Background information documents for a draft or proposed regulation;

(3) Data and information available from the Control Technology Center developed pursuant to Section 113 of the Act;

(4) Data and information contained in the Aerometric Informational Retrieval System, including information in the MACT database;

(5) Any additional information that can be expeditiously provided by the Administrator; and

(6) For the purpose of determinations by the Department, any additional information provided by the applicant or others, and any additional information considered available by the Department.

(e) "Construct a major source" means:

(1) To fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, or

(2) To fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria (i) through (vi) of this paragraph:

(i) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this subpart will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(ii) (A) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), or lowest achievable emission rate (LAER) under 40 CFR part 51 or 52; or

(B) The Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, or LAER;

(iii) The Department determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER, or BACT;

(v) If any commenter has asserted that a prior LAER, or BACT is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(vi) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under section 504(a) of the Act and either have been incorporated into any existing part 70 permit for the affected facility or will be incorporated into such permit upon issuance.

(f) "Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures that:

(1) Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

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(5) Are a combination of paragraphs (1)-(4) of this definition.

(g) "Effective date" in South Carolina of section 112(g)(2)(B) of the Act is July 1, 1998.

(h) "Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(i) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(j) "Hazardous Air Pollutant (HAP)" means any air pollutant defined in or pursuant to section 112(b) of the Act.

(k) "List of Source Categories" means the Source Category List required by section 112(c) of the Act.

(l) "Maximum achievable control technology (MACT) emission limitation for new sources" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the Department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

(m) "Notice of MACT Approval" means a document issued by the Department containing all federally enforceable conditions necessary to enforce the application and operation of MACT or other control technologies such that the MACT emission limitation is met.

(n) "Presumptive MACT determination" means an estimation of maximum achievable control technology (MACT), based on limited data gathered within a short time frame, that serves as a basis for a decision on how to develop an emission standard for a particular source category. Factors such as control technology costs, non-air quality health and environmental impacts, energy requirements, and benefits are not typically considered in the estimation.

(o) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(p) "Reconstruct a major source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

(2) It is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this subpart.

(q) "Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

(r) "Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

Section 63.42 - Program Requirements Governing Construction or Reconstruction of Major Sources.

Prohibition:

After the effective date of section 112(g)(2)(B) in the State, no person may begin actual construction or reconstruction of a major source of HAP in the State unless:

- (a) The major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h) or section 112(j) in 40 CFR Part 63, and the owner or operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in 40 CFR Part 63, subpart A; or
- (b) The Department has made a final and effective case-by-case determination pursuant to the provisions of Regulation 61-62.63, Section 63.43, such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

Section 63.43 - Maximum Achievable Control Technology (MACT) Determinations for Constructed and Reconstructed Major Sources.

(a) Applicability:

The requirements of this section apply to an owner or operator who constructs or reconstructs a major source of HAP subject to a case-by-case determination of maximum achievable control technology pursuant to Regulation 61-62.63, Section 63.42.

(b) Requirements for constructed and reconstructed major sources. When a case-by-case determination of MACT is required by Regulation 61-62.63, Section 63.42, the owner or operator shall obtain from the Department an approved MACT determination according to paragraph (c) of this section.

(c) Review Process:

(1) The owner or operator shall apply for and obtain a Notice of MACT Approval according to the procedures outlined in paragraphs (f) through (h) of this section.

(2) The MACT emission limitation and requirements established shall be effective as required by paragraph (j) of this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in 40 CFR Part 63, subpart A.

(d) Principles of MACT determinations. The following general principles shall govern preparation by the owner or operator of each permit application or other application requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the Department:

(1) The MACT emission limitation or MACT requirements recommended by the applicant and approved by the Department shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the Department.

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(2) Based upon available information, as defined in this subpart, the MACT emission limitation and control technology (including any requirements under paragraph (d)(3) of this section) recommended by the applicant and approved by the Department shall achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

(3) The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the Department may approve such a standard if the Department specifically determines that it is not feasible to prescribe or enforce an emission limitation under the criteria set forth in section 112(h)(2) of the Act.

(4) If the Administrator has either proposed a relevant emission standard pursuant to section 112(d) or section 112(h) of the Act or adopted a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, then the MACT requirements applied to the constructed or reconstructed major source shall have considered those MACT emission limitations and requirements of the proposed standard or presumptive MACT determination.

(e) Application requirements for a case-by-case MACT determination.

(1) An application for a MACT determination (whether a permit application under Title V of the Act, an application for a Notice of MACT Approval, or other document specified by the Department under paragraph (c) of this section) shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section.

(2) In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain the following information:

(i) The name and address (physical location) of the major source to be constructed or reconstructed;

(ii) A brief description of the major source to be constructed or reconstructed and identification of any listed source category or categories in which it is included;

(iii) The expected commencement date for the construction or reconstruction of the major source;

(iv) The expected completion date for construction or reconstruction of the major source;

(v) The anticipated date of start-up for the constructed or reconstructed major source;

(vi) The HAP emitted by the constructed or reconstructed major source, and the estimated emission rate for each such HAP, to the extent this information is needed by the Department to determine MACT;

(vii) Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

(viii) The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the Department to determine MACT;

(ix) The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity, to the extent this information is needed by the Department to determine MACT;

(x) A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in paragraph (d) of this section;

(xi) The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the Department);

(xii) Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology; and

(xiii) Any other relevant information required pursuant to 40 CFR Part 63, subpart A.

(3) In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain the following information:

(i) The information described in paragraphs (e)(2)(i) through (e)(2)(x) of this section; and

(ii) Documentation of the control technology in place.

(f) Administrative procedures for review of the Notice of MACT Approval.

(1) The Department will notify the owner or operator in writing, within 45 days from the date the application is first received, as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The Department will initially approve the recommended MACT emission limitation and other terms set forth in the application, or the Department will notify the owner or operator in writing of its intent to disapprove the application, within 30 calendar days after the owner or operator is notified in writing that the application is complete.

(3) The owner or operator may present, in writing, within 60 calendar days after receipt of notice of the Department's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the Department before it decides whether to finally disapprove the application.

(4) The Department will either initially approve or issue a final disapproval of the application within 90 days after it notifies the owner or operator of an intent to disapprove or within 30 days after the date additional information is received from the owner or operator, whichever is earlier.

(5) A final determination by the Department to disapprove any application will be in writing and will specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner or operator may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.

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(6) An initial decision to approve an application for a MACT determination will be set forth in the Notice of MACT Approval as described in paragraph (g) of this section.

(g) Notice of MACT Approval.

(1) The Notice of MACT Approval will contain a MACT emission limitation (or a MACT work practice standard if the Department determines it is not feasible to prescribe or enforce an emission standard) to control the emissions of HAP. The MACT emission limitation or standard will be determined by the Department and will conform to the principles set forth in paragraph (d) of this section.

(2) The Notice of MACT Approval will specify any notification, operation and maintenance, performance testing, monitoring, reporting and record keeping requirements. The Notice of MACT Approval will include:

(i) In addition to the MACT emission limitation or MACT work practice standard established under this subpart, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with the requirements of Regulation 61-62.70.6(c);

(iii) In accordance with section 114(a)(3) of the Act, requirements for monitoring capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this subpart, including emission limitations;

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in 40 CFR Part 63, subpart A;

(3) All provisions contained in the Notice of MACT Approval shall be federally enforceable upon the effective date of issuance of such notice, as provided by paragraph (j) of this section.

(4) The Notice of MACT Approval shall expire if construction or reconstruction has not commenced within 18 months of issuance, unless the Department has granted an extension which shall not exceed an additional 12 months.

(h) Opportunity for public comment on the Notice of MACT Approval.

(1) The Department will provide opportunity for public comment on the Notice of MACT Approval, including, at a minimum:

(i) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the Department's initial decision to approve the application;

(ii) A 30-day period for submittal of public comment; and

(iii) A notice by prominent advertisement in the area affected of the location of the source information and initial decision specified in paragraph (h)(1)(i) of this section.

(2) At the discretion of the Department, the Notice of MACT Approval setting forth the initial decision to approve the application may become final automatically at the end of the comment period if no adverse comments are received. If adverse comments are received, the Department will make any necessary revisions in its analysis and decide whether to finally approve the application within 30 days after the end of the comment period.

(i) EPA notification. The Department will send a copy of the final Notice of MACT Approval to the Administrator through the appropriate Regional Office, and to all other state and local air pollution control agencies having jurisdiction in affected states.

(j) Effective date of MACT determination shall be the date the Notice of MACT Approval becomes final.

(k) Compliance date. On and after the date of start-up, a constructed or reconstructed major source which is subject to the requirements of this subpart shall be in compliance with all applicable requirements specified in the MACT determination.

(l) Compliance with MACT determinations.

(1) An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the final Notice of MACT Approval, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

(2) An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the final Notice of MACT Approval. Any violation of such requirements by the owner or operator shall be deemed by the Department and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act.

(m) Reporting to the Administrator. Within 60 days of the issuance of a final Notice of MACT Approval, the Department will provide a copy of such notice to the Administrator, and will provide a summary in a compatible electronic format for inclusion in the MACT data base.

Section 63.44 - Requirements for Constructed or Reconstructed Major Sources Subject to a Subsequently Promulgated MACT Standard or MACT Requirement.

(a) If the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the Department issues a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which would be deemed to be a constructed or reconstructed major source under this subpart before the date that the owner or operator has obtained a final and legally effective MACT determination under any of the review options available pursuant to Regulation 61-62.63, Section 63.43, the owner or operator of the source(s) shall comply with the promulgated standard or determination rather than any MACT determination under section 112(g) by the Department, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the Department makes a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this subpart and has been subject to a prior case-by-case MACT determination pursuant to Regulation 61-62.63, Section 63.43, and the owner or operator obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of such emission standard, then the Department will (if the initial part 70 permit has not yet been issued) issue an initial operating permit which incorporates the emission standard or determination, or will (if the initial part 70 permit has been issued) revise the operating permit according to the reopening procedures in Regulation 61-62.70, or 40 CFR part 70 or part 71, whichever is relevant, to incorporate the emission standard or determination.

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(1) The EPA may include in the emission standard established under section 112(d) or section 112(h) of the Act a specific compliance date for those sources which have obtained a final and legally effective MACT determination under this subpart and which have submitted the information required by Regulation 61-62.63, Section 63.43, to the Department before the close of the public comment period for the standard established under section 112(d) of the Act. Such date shall assure that the owner or operator shall comply with the promulgated standard as expeditiously as practicable, but not longer than eight years after such standard is promulgated. In that event, the Department shall incorporate the applicable compliance date in the part 70 operating permit.

(2) If no compliance date has been established in the promulgated 112(d) or 112(h) standard or section 112(j) determination, for those sources which have obtained a final and legally effective MACT determination under this subpart, then the Department shall establish a compliance date in the permit that assures that the owner or operator shall comply with the promulgated standard or determination as expeditiously as practicable, but not longer than eight years after such standard is promulgated or a section 112(j) determination is made.

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, if the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the Department issues a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this subpart and which is the subject of a prior case-by-case MACT determination pursuant to Regulation 61-62.63, Section 63.43 of this subpart, and the level of control required by the emission standard issued under section 112(d) or section 112(h) or the determination issued under section 112(j) of the Act is less stringent than the level of control required by any emission limitation or standard in the prior MACT determination, the Department is not required to incorporate any less stringent terms of the promulgated standard in the part 70 operating permit applicable to such source(s) and may in its discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit.

Note: Section 112 of the Clean Air Act as amended in 1990 requires the United States Environmental Protection Agency (USEPA) to issue emission standards for all major sources of the listed hazardous air pollutants. These rules are generally known as "maximum achievable control technology" (MACT) standards. On June 26, 1995 [60 FR 32913], the USEPA granted full approval to the State of South Carolina under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal rules as promulgated. These rules are incorporated by reference below and will be periodically revised as future Federal MACT standards are promulgated. The word "Administrator" as used in Subparts C through XXX shall mean the Department of Health and Environmental Control unless the context requires otherwise.

**Subpart C
(Reserved)**

**Subpart D
(Reserved)**

**Subpart E
(Reserved)**

Subpart F

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

The provisions of Title 40 CFR Part 63, subpart F, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart F	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	April 22, 1994	[59 FR 19454]
Revision	Vol. 59	September 20, 1994	[59 FR 48176]
Revision	Vol. 59	October 24, 1994	[59 FR 53360]
Revision	Vol. 59	October 28, 1994	[59 FR 54132]
Revision	Vol. 60	January 27, 1995	[60 FR 5321]
Revision	Vol. 60	April 10, 1995	[60 FR 18023]
Revision	Vol. 60	April 10, 1995	[60 FR 18028]
Revision	Vol. 60	December 12, 1995	[60 FR 63626]
Revision	Vol. 61	February 29, 1996	[61 FR 7718]
Revision	Vol. 61	June 20, 1996	[61 FR 31439]
Revision	Vol. 61	December 5, 1996	[61 FR 64574]
Revision	Vol. 62	January 17, 1997	[62 FR 2729]
Revision	Vol. 63	May 12, 1998	[63 FR 26081]
Revision	Vol. 64	April 26, 1999	[64 FR 20191]

Subpart G

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

The provisions of Title 40 CFR Part 63, subpart G, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart G	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	April 22, 1994	[59 FR 19468]
Revision	Vol. 59	June 6, 1994	[59 FR 29201]
Revision	Vol. 59	October 24, 1994	[59 FR 53360]
Revision	Vol. 60	January 27, 1995	[60 FR 5321]
Revision	Vol. 60	April 10, 1995	[60 FR 18024]
Revision	Vol. 60	April 10, 1995	[60 FR 18029]
Revision	Vol. 60	December 12, 1995	[60 FR 63626]
Revision	Vol. 61	February 29, 1996	[61 FR 7718]
Revision	Vol. 61	December 5, 1996	[61 FR 64575]
Revision	Vol. 62	January 17, 1997	[62 FR 2742]
Revision	Vol. 63	December 9, 1998	[63 FR 67792]
Revision	Vol. 64	April 26, 1999	[64 FR 20191]

Subpart H

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

The provisions of Title 40 CFR Part 63, subpart H, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart H	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	April 22, 1994	[59 FR 19568]
Revision	Vol. 59	September 20, 1994	[59 FR 48176]

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40 CFR Part 63 subpart H	Federal Register Citation		
	Volume	Date	Notice
Revision	Vol. 59	October 24, 1994	[59 FR 53360]
Revision	Vol. 60	January 27, 1995	[60 FR 5321]
Revision	Vol. 60	April 10, 1995	[60 FR 18024]
Revision	Vol. 60	April 10, 1995	[60 FR 18029]
Revision	Vol. 60	December 12, 1995	[60 FR 63631]
Revision	Vol. 61	June 20, 1996	[61 FR 31439]
Revision	Vol. 62	January 17, 1997	[62 FR 2788]
Revision	Vol. 64	April 26, 1999	[64 FR 20198]

Subpart I

National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

The provisions of Title 40 CFR Part 63, subpart I, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart I	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	April 22, 1994	[59 FR 19587]
Revision	Vol. 59	September 20, 1994	[59 FR 48178]
Revision	Vol. 59	October 24, 1994	[59 FR 53360]
Revision	Vol. 59	October 28, 1994	[59 FR 54132]
Revision	Vol. 60	January 27, 1995	[60 FR 5321]
Revision	Vol. 60	April 10, 1995	[60 FR 18025]
Revision	Vol. 60	April 10, 1995	[60 FR 18030]
Revision	Vol. 61	February 29, 1996	[61 FR 7718]
Revision	Vol. 61	June 20, 1996	[61 FR 31441]
Revision	Vol. 62	January 17, 1997	[62 FR 2792]

Subpart J – K (Reserved)

Subpart L

National Emission Standards for Coke Oven Batteries

The provisions of Title 40 CFR Part 63, subpart L, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart L	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 58	October 27, 1993	[58 FR 57911]
Revision	Vol. 59	January 13, 1994	[59 FR 1992]

Subpart M

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

The provisions of Title 40 CFR Part 63, subpart M, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart M	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 58	September 22, 1993	[58 FR 49376]
Revision	Vol. 58	December 20, 1993	[58 FR 66289]
Revision	Vol. 61	June 3, 1996	[61 FR 27788]
Revision	Vol. 61	June 11, 1996	[61 FR 29485]
Revision	Vol. 61	September 19, 1996	[61 FR 49265]

Subpart N

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

The provisions of Title 40 CFR Part 63, subpart N, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart N	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	January 25, 1995	[60 FR 4963]
Revision	Vol. 60	May 24, 1995	[60 FR 27598]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 61	June 3, 1996	[61 FR 27787]
Revision	Vol. 62	January 30, 1997	[62 FR 4465]
Revision	Vol. 62	August 11, 1997	[62 FR 42920]

Subpart O

Ethylene Oxide Emission Standards for Sterilization Facilities

The provisions of Title 40 CFR Part 63, subpart O, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart O	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	December 6, 1994	[59 FR 62589]
Revision	Vol. 61	June 3, 1996	[61 FR 27788]
Revision	Vol. 62	December 9, 1997	[62 FR 64736]
Revision	Vol. 63	December 4, 1998	[63 FR 66994]

Subpart P (Reserved)

Subpart Q

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

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The provisions of Title 40 CFR Part 63, subpart Q, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart Q	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	September 8, 1994	[59 FR 46350]
Revision	Vol. 63	July 23, 1998	[63 FR 39519]

Subpart R

National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

The provisions of Title 40 CFR Part 63, subpart R, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart R	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	December 14, 1994	[59 FR 64318]
Revision	Vol. 60	February 8, 1995	[60 FR 7627]
Revision	Vol. 60	June 26, 1995	[60 FR 32913]
Revision	Vol. 60	August 18, 1995	[60 FR 43260]
Revision	Vol. 60	December 8, 1995	[60 FR 62992]
Revision	Vol. 61	February 29, 1996	[61 FR 7723]
Revision	Vol. 62	February 28, 1997	[62 FR 9092]

Subpart S

National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

The provisions of Title 40 CFR Part 63, subpart S, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart S	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 63	April 15, 1998	[63 FR 18616]
Revision	Vol. 63	August 7, 1998	[63 FR 42239]
Revision	Vol. 63	September 16, 1998	[63 FR 49459]
Revision	Vol. 63	December 28, 1998	[63 FR 71389]
Revision	Vol. 64	April 12, 1999	[64 FR 17563]

Subpart T

National Emission Standards for Halogenated Solvent Cleaning

The provisions of Title 40 CFR Part 63, subpart T, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart T	Federal Register Citation		
	Volume	Date	Notice

40 CFR Part 63 subpart T	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	December 2, 1994	[59 FR 61805]
Revision	Vol. 59	December 30, 1994	[59 FR 67750]
Revision	Vol. 60	June 5, 1995	[60 FR 29485]
Revision	Vol. 63	May 5, 1998	[63 FR 24751]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	July 13, 1999	[64 FR 37687]

Subpart U

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

The provisions of Title 40 CFR Part 63, subpart U, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart U	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	September 5, 1996	[61 FR 46924]
Revision	Vol. 62	January 14, 1997	[62 FR 1837]
Revision	Vol. 62	March 17, 1997	[62 FR 12549]
Revision	Vol. 62	July 15, 1997	[62 FR 37722]
Revision	Vol. 64	March 9, 1999	[64 FR 11542]
Revision	Vol. 64	May 7, 1999	[64 FR 24511]
Revision	Vol. 64	June 30, 1999	[64 FR 35028]

Subpart V (Reserved)

Subpart W

National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

The provisions of Title 40 CFR Part 63, subpart W, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart W	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	March 8, 1995	[60 FR 12676]

Subpart X

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

The provisions of Title 40 CFR Part 63, subpart X, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart X	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	June 23, 1995	[60 FR 32594]
Revision	Vol. 61	June 3, 1996	[61 FR 27788]

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40 CFR Part 63 subpart X	Federal Register Citation		
	Volume	Date	Notice
Revision	Vol. 61	December 12, 1996	[61 FR 65336]
Revision	Vol. 62	June 13, 1997	[62 FR 32216]
Revision	Vol. 63	August 24, 1998	[63 FR 45011]
Revision	Vol. 64	January 29, 1999	[64 FR 4572]

Subpart Y

National Emission Standards for Marine Tank Vessel Loading Operations

The provisions of Title 40 CFR Part 63, subpart Y, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart Y	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	September 19, 1995	[60 FR 48399]

Subpart Z

(Reserved)

Subpart AA

National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

The provisions of Title 40 CFR Part 63, subpart AA, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart AA	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31376]

Subpart BB

National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizer Production Plants

The provisions of Title 40 CFR Part 63, subpart BB, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart BB	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31382]

Subpart CC

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

The provisions of Title 40 CFR Part 63, subpart CC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart CC	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	August 18, 1995	[60 FR 43260]
Revision	Vol. 60	September 27, 1995	[60 FR 49976]
Revision	Vol. 61	February 23, 1996	[61 FR 7051]
Revision	Vol. 61	June 12, 1996	[61 FR 29878]
Revision	Vol. 61	June 28, 1996	[61 FR 33799]
Revision	Vol. 62	February 21, 1997	[62 FR 7938]
Revision	Vol. 63	March 20, 1998	[63 FR 13537]
Revision	Vol. 63	May 18, 1998	[63 FR 27212]
Revision	Vol. 63	June 9, 1998	[63 FR 31361]
Revision	Vol. 63	August 18, 1998	[63 FR 44140]

Subpart DD

National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations

The provisions of Title 40 CFR Part 63, subpart DD, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart DD	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34158]
Revision	Vol. 64	July 20, 1999	[64 FR 38963]

Subpart EE

National Emission Standards for Magnetic Tape Manufacturing Operations

The provisions of Title 40 CFR Part 63, subpart EE, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart EE	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 59	December 15, 1994	[59 FR 64596]
Revision	Vol. 64	April 9, 1999	[64 FR 17464]

Subpart FF

(Reserved)

Subpart GG

National Emission Standards for Aerospace Manufacturing and Rework Facilities

The provisions of Title 40 CFR Part 63, subpart GG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart GG	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	September 1, 1995	[60 FR 45956]

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40 CFR Part 63 subpart GG	Federal Register Citation		
	Volume	Date	Notice
Revision	Vol. 61	February 9, 1996	[61 FR 4903]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 63	March 27, 1996	[63 FR 15016]
Revision	Vol. 63	September 1, 1998	[63 FR 46532]

Subpart HH

National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

The provisions of Title 40 CFR Part 63, subpart HH, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart HH	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 17, 1999	[64 FR 32628]

Subpart II

National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

The provisions of Title 40 CFR Part 63, subpart II, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart II	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	December 15, 1995	[60 FR 64336]
Revision	Vol. 61	June 18, 1996	[61 FR 30816]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]

Subpart JJ

National Emission Standards for Wood Furniture Manufacturing Operations

The provisions of Title 40 CFR Part 63, subpart JJ, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart JJ	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 60	December 7, 1995	[60 FR 62936]
Revision	Vol. 62	June 3, 1997	[62 FR 30259]
Revision	Vol. 62	June 9, 1997	[62 FR 31363]
Revision	Vol. 63	December 28, 1998	[63 FR 71380]

Subpart KK

National Emission Standards for the Printing and Publishing Industry

The provisions of Title 40 CFR Part 63, subpart KK, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart KK	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	May 30, 1996	[61 FR 27140]

Subpart LL

National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

The provisions of Title 40 CFR Part 63, subpart LL, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart LL	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 62	October 7, 1997	[62 FR 52407]

Subpart MM – NN

(Reserved)

Subpart OO

National Emission Standards for Tanks - Level 1

The provisions of Title 40 CFR Part 63, subpart OO, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart OO	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34184]
Revision	Vol. 64	July 20, 1999	[64 FR 38985]

Subpart PP

National Emission Standards for Containers

The provisions of Title 40 CFR Part 63, subpart PP, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart PP	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34186]
Revision	Vol. 64	July 20, 1999	[64 FR 38987]

Subpart QQ

National Emission Standards for Surface Impoundments

The provisions of Title 40 CFR Part 63, subpart QQ, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart QQ	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34190]

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40 CFR Part 63 subpart QQ	Federal Register Citation		
	Volume	Date	Notice
Revision	Vol. 64	July 20, 1999	[64 FR 38988]

Subpart RR

National Emission Standards for Individual Drain Systems

The provisions of Title 40 CFR Part 63, subpart RR, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart RR	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34193]
Revision	Vol. 64	July 20, 1999	[64 FR 38989]

Subpart SS

National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

The provisions of Title 40 CFR Part 63, subpart SS, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart SS	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34866]
Revision	Vol. 64	November 22, 1999	[64 FR 63702]

Subpart TT

National Emission Standards for Equipment Leaks - Control Level 1

The provisions of Title 40 CFR Part 63, subpart TT, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart TT	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34886]
Revision	Vol. 64	November 22, 1999	[64 FR 63702]

Subpart UU

National Emission Standards for Equipment Leaks - Control Level 2 Standards

The provisions of Title 40 CFR Part 63, subpart UU, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart UU	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34899]

40 CFR Part 63 subpart UU	Federal Register Citation		
	Volume	Date	Notice
Revision	Vol. 64	November 22, 1999	[64 FR 63702]

Subpart VV

National Emission Standards for Oil-Water Separators and Organic-Water Separators

The provisions of Title 40 CFR Part 63, subpart VV, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart VV	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	July 1, 1996	[61 FR 34195]
Revision	Vol. 64	July 20, 1999	[64 FR 38991]

Subpart WW

National Emission Standards for Storage Vessels (Tanks) - Control Level 2

The provisions of Title 40 CFR Part 63, subpart WW, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart WW	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34918]

Subpart XX

(Reserved)

Subpart YY

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

The provisions of Title 40 CFR Part 63, subpart YY, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart YY	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34921]
Revision	Vol. 64	November 22, 1999	[64 FR 63695]

Subpart ZZ – BBB

(Reserved)

Subpart CCC

National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants

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The provisions of Title 40 CFR Part 63, subpart CCC, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart CCC	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 22, 1999	[64 FR 33218]

Subpart DDD

National Emission Standards for Hazardous Air Pollutants for Mineral Wood Production

The provisions of Title 40 CFR Part 63, subpart DDD, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart DDD	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 1, 1999	[64 FR 29503]

Subpart EEE

National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

The provisions of Title 40 CFR Part 63, subpart EEE, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart EEE	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 63	June 19, 1998	[63 FR 33820]
Revision	Vol. 64	September, 30, 1999	[64 FR 53027]
Revision	Vol. 64	November 19, 1999	[64 FR 63209]

Subpart FFF (Reserved)

Subpart GGG

National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production

The provisions of Title 40 CFR Part 63, subpart GGG, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart GGG	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 63	September 21, 1998	[63 FR 50326]

Subpart HHH

National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

The provisions of Title 40 CFR Part 63, subpart HHH, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart HHH	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 17, 1999	[64 FR 32647]

Subpart III

National Emission Standards for Hazardous Air Pollutants From Flexible Polyurethane Foam Production

The provisions of Title 40 CFR Part 63, subpart III, as originally published in the *Federal Register* and as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart III	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 63	October 7, 1998	[63 FR 53996]

Subpart JJJ

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

The provisions of Title 40 CFR Part 63, subpart JJJ, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart JJJ	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 61	September 12, 1996	[61 FR 48229]
Revision	Vol. 61	October 18, 1996	[61 FR 54342]
Revision	Vol. 62	January 14, 1997	[62 FR 1838]
Revision	Vol. 62	June 6, 1997	[62 FR 30995]
Revision	Vol. 62	July 15, 1997	[62 FR 37722]
Revision	Vol. 63	February 27, 1998	[63 FR 9944]
Revision	Vol. 63	March 31, 1998	[63 FR 15315]
Revision	Vol. 64	March 9, 1999	[64 FR 11547]
Revision	Vol. 64	June 8, 1999	[64 FR 30409]
Revision	Vol. 64	June 30, 1999	[64 FR 35028]

Subpart KKK (Reserved)

Subpart LLL

National Emission Standards for the Portland Cement Manufacturing Industry

The provisions of Title 40 CFR Part 63, subpart LLL, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

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40 CFR Part 63 subpart LLL	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31925]
Revision	Vol. 64	September 30, 1999	[64 FR 53070]

SUBPART MMM

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR PESTICIDE ACTIVE INGREDIENT PRODUCTION

The provisions of Title 40 CFR Part 63, subpart MMM, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart MMM	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 23, 1999	[64 FR 33589]

Subpart NNN

National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

The provisions of Title 40 CFR Part 63, subpart NNN, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart NNN	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31708]

Subpart OOO

(Reserved)

Subpart PPP

National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

The provisions of Title 40 CFR Part 63, subpart PPP, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart PPP	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 1, 1999	[64 FR 29439]
Revision	Vol. 64	June 14, 1999	[64 FR 31895]

Subpart QQQ – SSS

(Reserved)

Subpart TTT

National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

The provisions of Title 40 CFR Part 63, subpart TTT, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart TTT	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	June 4, 1999	[64 FR 30204]

**Subpart UUU
(Reserved)**

**Subpart VVV
National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works**

The provisions of Title 40 CFR Part 63, subpart VVV, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart VVV	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	October 26, 1999	[64 FR 57572]

**Subpart WWW
(Reserved)**

**Subpart XXX
National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese**

The provisions of Title 40 CFR Part 63, subpart XXX, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart XXX	Federal Register Citation		
	Volume	Date	Notice
Original Promulgation	Vol. 64	May 20, 1999	[64 FR 27458]

Statement of Need and Reasonableness

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

DESCRIPTION OF REGULATION:

Purpose: The proposed amendment will add a list to R.61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*, of maximum achievable control technology standards for which prior delegation has been granted. These regulations will be incorporated into R.61-62.63 by reference and the title of the regulation will be revised to *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*.

Legal Authority: The legal authority for R.61-62 is Sections 48-1-30 through 48-1-60, S.C. Code of Laws.

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Plan for Implementation: The proposed amendments will take effect upon promulgation by the Board and publication in the *State Register*.

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

Section 112 of the Clean Air Act as amended in 1990 requires the United States Environmental Protection Agency (USEPA) to issue emission standards for all major sources of the 188 listed hazardous air pollutants. On July 16, 1992 [57 FR 31576], the USEPA published an initial list of source categories for which air toxics emission standards are to be promulgated. By the year 2000, the USEPA must develop rules for all of these categories that require maximum achievable reduction in emissions, considering cost and other factors. These rules are generally known as "maximum achievable control technology" (MACT) standards. On June 26, 1995 [60 FR 32913], the USEPA granted full approval to the State of South Carolina under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal rules as promulgated. This amendment incorporates a list by reference of those MACT standards for which delegation has been granted thereby clarifying the regulations and making them more useful for the regulated community. This regulation will be periodically revised as future Federal MACT standards are promulgated to keep the State regulation updated.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions nor will the amendment result in any increased cost to the regulated community. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal law. The proposed amendment merely adds a listing of these standards to the regulations. Adding this list to the regulations will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

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

None.

Document No. 2454
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 44-93-10 et. seq.

R.61-105. Infectious Waste Management Regulations

Synopsis:

R.61-105 has been revised as follows:

(1) Language no longer valid has been deleted and the regulation has been updated pursuant to the ruling of the United States District Court on January 20, 1994, declaring that certain provisions of R.61-105 were unconstitutional.

(2) Infectious waste standards for generators, transporters, transfer stations and treatment facilities have been updated.

Discussion of Revisions:

(1) Language no longer valid has been deleted and the regulation has been updated pursuant to the ruling of the United States District Court on January 20, 1994, declaring that certain provisions of R.61-105 were unconstitutional:

<u>SECTION</u>	<u>CHANGE</u>
61-105.K(5)(a)	Revised by deleting “on-site storage for quantities of no more than fifty (50) pounds” to “onsite storage”; revised by replacing “and” by “or.”
61-105.K(5)(b)&(c)	These sections are combined into “61-105.K(5)(b).” Revised to replace invalid language ruled invalid by the Court. Changes relate when infectious waste leaves the generator site.
Existing 61-105.K(5)(d)	Revised existing “61-105.K(5)(d)” and renumbering it to “61-105.K(5)(c).” Delete wording relating to requirements for time for waste to be delivered to treatment facilities.
Existing 61-105.K(5)(e)	Renumbered existing “61-105.K(5)(e)” to “61-105.K(5)(d).” One grammatical change is made changing “a” to “an.”
61-105.K(5)(f)	Deleted “61-105.K(5)(f)” to remove invalid language.
61-105.Q(1)(h)	Deleted subitem because language is invalid.
Existing 61-105.CC	Renumbered existing “61-105.CC” by “61-105.DD.” “ 61-105.CC, CC(1)” through CC(4) deletes invalid language and is revised to address the initial processing fee.

(2) Infectious waste standards for generators, transporters, transfer stations and treatment facilities has been updated.

61-105.A(3)	Punctuation change. No substantive change is made.
61-105.A(5)	Stylistic change. Replace wording “transporters, and owners/operators” to “transporters, owners/operators,” deleting the word “and.” Also the wording “facilities, and any” is changed to “facilities, or any.”
61-105.D(1)(w)	This subsection item was revised to insert “Resource Conservation and Recovery Act RCRA.” Replace Subpart A, Section 261.3” language with “R.61-79.261.3.”
61-105.D(1)(bb)	Stylistic change to definition of “Off-site.” Replace word from “Off-site” to “Offsite” and replace word “on-site” to “onsite.”

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61-105.D(1)(cc) Stylistic change to definition of “On-site. Replace word from “On-site” to “Onsite.”

New

- 61-105.D(1) Two new definitions are added to this section as follows: “Products of conception” and “Secured Area.” One existing definition, “Solid Waste Collection Person,” at existing section “61-105.D(1)(hh)”, is deleted. New definitions are added in alphabetical order; remaining definitions will be renumbered accordingly.
- 61-105.D(1)(f) Existing “61-105.D(1)(ff)”, “Radioactive waste,” was revised to replace the word “waste” to “material.”
- 61-105.D(1)(gg) Replaced existing definition of “Solid Waste.” Definition was revised for consistency to mirror the definition as provided in “R.61-107”, Solid Waste Management.
- 61-105.D(1)(jj) Existing “61-105. D(1)(jj)”, definition of “Storage” was revised to delete language: “the actual or intended.”
- 61-105.D(1)(nn) Stylistic change to definition of “Transporter.” The word “off-site” was changed to “offsite.”
- 61-105.D(1)(oo) Existing “61-105.D(1)(oo)”, “Transport vehicle,” was revised to replace the words “motor vehicle or rail car” to “method.”
- 61-105.D(1)(rr) Existing “61-105.D(1)(rr)”, “Universal biohazard symbol,” was revised to replace an OSHA reference from “1910.145(f)(8)(ii)” to “1910.1030(g)(1)(I)(B).”
- 61-105.E(1)(b) Revised to replace wording “etiological” to “human pathogenic;” replaced wording “mix cultures.” to “mix microbiological cultures.”
- 61-105.E(1)(d) Revised to insert the word “limbs, and” to “limbs, products of conception;” revised to add wording “cervical;” and; add language relating to bloodborne pathogens.
- 61-105.E(1)(f) Revised to replace “Class,” to “Biosafety Level 4 agents.”
- 61-105.E(1)(b) Revised to replace the word “waste” to “material.”
- 61-105.E(2)(f) Revised to replace “remains,” to “remains, products of conception.”
- 61-105.E(2)(g) Stylistic change - replace wording “off-site” to “offsite.”
- 61-105.E(3) Stylistic change - replace wording “wastes fit” to “waste fits.”
- 61-105.F(1) Revised to delete language relating to registering after 90 days of the effective date of the regulation.
- 61-105 F(1)(c) Revised to require physical location of the site. The word “ generation” was revised to “waste generated” for clarification.

New

- 61-105 F(1)(d) New subitem was added at “61-105.F(1)(d)” to include “Mailing address for the site of generation.”

Existing

- 61-105.F(1)(d) This section was renumbered to “61-105.F(1)(e)” and was revised stylistically to delete the word “and” at the end of the subitem. No other text was changed.
- New
61-105.F(1)(f) New subitem was added to include “contact name of the infectious waste coordinator; and.”
- Existing
61-105.F(1)(g) Existing “61-105.F(1)(e)” was renumbered stylistically to “61-105.F(1)(g).”
- 61-105.F(3) Revised stylistically to insert “(3)” between the words “three” and “years” and insert “(5)” between the words “five” and “years.” No other text was changed.
- 61-105.F(5) Stylistic change. Replaced wording “on-site” to “onsite.” No other text was changed.
- 61-105.F(6)(b) Stylistic change. Replaced wording “off-site” to “offsite.” No other text was changed.
- 61-105.F(6)(c) Stylist change. Replaced wording “off-site” to “offsite.” No other text was changed.
- New
61-105 F(6)(d) New subitem was added at “61-105.F(6)(d)” to include language relating to radioactive material.
- Existing
61-105.F(6)(d) Existing “61-105.F(6)(d)” was renumbered stylistically to “61-105.F(6)(e).” Revised stylistically to change reference from “Section Z” to “Section AA.”
- Existing
61-105.F(6)(e) Existing “61-105.F(6)(e)” was renumbered stylistically to “61-105.F(6)(f).” No other text was changed.
- Existing
61-105.F(6)(f) Existing “61-105.F(6)(f)” was renumbered stylistically to “61-105.F(6)(g).” Revised to delete certain language and replacing it with language that requires infectious waste to be managed to prevent exposure to the public or the environment.
- Existing
61-105.F(6)(g) Existing “61-105.F(6)(g)” was renumbered stylistically to “61-105.F(6)(h).” Revised for clarification. Insert “treat infectious waste onsite or” and replace wording “off-site” by “offsite” for stylistic change.
- 61-105.F(7) Revised to delete existing language in this section and to replace it with language to clarify when a generator relocates, closes, or ceases to operate.
- 61-105.G(1)(a) Stylistic change for reference. Replace “except Section F (4); (6)(a),(b), and (g); and F(7); and” with “except Section F (4); (5), and (6)(h); and.”
- 61-105.G(1)(b) Stylistic change - replace wording “wastes” to “waste.”
- 61-105.G(1)(b)(ii) Stylistic change for consistency in language. Revise wording “cultures” to “microbiological cultures, products of conception.”

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- 61-105.G(2)(c) Revised subitem with language to protect the container from weather conditions.
- 61-105.G(3) Stylistic changes. Replaced wording “off-site” to “offsite.” Reference was revised from “DD” to “EE.” No other changes were made.
- 61-105.H Stylistic change - replaced wording “these wastes” to “the waste.”
- 61-105.I(1) Stylistic change. Replaced wording “off-site” to “offsite.” No other changes were made.
- 61-105.I(3) Stylistic change. Replaced wording “semi-rigid” to “semirigid.” No other changes were made.
- 61-105.I(7) Replaced wording “roll-off containers, truck” to “trailer.”
- 61-105.I(8) Revised to insert wording “transportation.”
- 61-105.I(9) Deleted subitem “61-105. I(9)” related to improperly packaged containers.
- Existing
61-105.I(10)&(11) Renumbered to 61-105.I(9) and (10). No changes were made to the text.
- Existing
61-105.I(12) Renumbered existing “61-105.I(12)” stylistically to “1-105.I(11).” Revisions deleted language relating to labeling. Language was added on how the waste must be managed.
- New
61-105.I(12) New subitem was added related to labeling of treated infectious waste.
- 61-105.J(2) Stylistic change. Replaced wording “off-site” to “offsite.” No other changes were made.
- 61-105.J(2)(a) Stylistic change. Revision replaces OSHA reference from “1910.145(f)(8)(ii)” to “1910.1030(g)(1)(I)(B).” No other changes were made.
- 61-105.J(2)(b) Stylistic punctuation and grammatical change. Revision replaces wording “and” by “or.”
- 61-105.J(2)(e) Revised to add “or sent off site, if not stored” for clarification.
- 61-105.K(1) Revised by inserting wording “weather conditions,” to “weather conditions, theft, vandalism” for clarification.
- 61-105.K(4) Revised to replace an OSHA reference from “1910.145 (f) (8) (ii)” to “1910.1030(g)(1)(I)(B).”
- 61-105.K(6) One grammatical change was made changing “a” to “an.”
- 61-105.L(2) Revised language to clarify requirements for disinfectants according to EPA.
- 61-105.M(1) Stylistic change. Replaced wording “off-site” to “offsite.” Revised language to clarify “designated” to “approved.”
- 61-105.M(1)(a) Revised to clarify by adding the Department identification number.
- 61-105.M(1)(b) Grammatical change. Replaced wording “wastes” to “waste.”

- 61-105.M(1)(c) Revised to delete wording “and the weight of the waste” and make a stylistic change from “1%” to “one (1) percent.”
- 61-105.M(1)(f) Revised to add reference to the S.C. Hazardous Waste Management Regulations.
- 61-105.M(1)(g) Revised to replace the word “waste” to “material” and add reference to Section F(6)(d).
- 61-105.M(1)(k) Stylistic change to replace wording of “on-site” to “onsite.” No other changes were made.
- 61-105.M(2) Stylistic change to replace wording “off-site” to “offsite.” No other changes were made.
- 61-105.M(3) Revised stylistically to change “(g), and (f)” with “(f), and (g).” No other changes were made.
- 61-105.M(5) Revision extends the thirty day requirement to fifty (50) days for generators to receive their manifest.
- 61-105.N(1) Grammatical change to revise “wastes” to “waste” and “are” by “is.” Deleted for clarification wording “ transported,” with “or” and delete wording “, or disposed.”
- 61-105.N(2) Stylistic change to replace wording “off-site” to “offsite.” No other changes were made.
- 61-105.N(3) Revised language for the waste to be transported to a treatment facility.
- New
61-105.N(3)(a)&(b) New subitems were added to clarify how infectious waste is transferred to one vehicle to another and unloaded into a fixed storage area.
- 61-105.N(4) Revised stylistically for clarification. Replace wording “pre-transport” with “the.” Grammatical change to replace wording “wastes” to “waste.”
- 61-105.N(12) Deleted language and replace it with “Reserved.”
- 61-105.O(1)(a) Stylistic punctuation and grammatical change and deletion of the wording “and EPA Hazardous or Medical Waste Identification Number;”
- 61-105.O(1)(b) Stylistic punctuation and grammatical change for clarification.
- New
61-105.O(2)(a)&(b) New subitems were added for the transporters to notify the Department in writing within thirty (30) days if any changes occur and for transporters who fail to re-register by the expiration date.
- New
61-105.O(6) Subitem was for added exempt status from registration for transporters which neither pick-up infectious waste nor deliver infectious waste within this state.
- 61-105.P(2)(a) Grammatical change for clarification. No other changes were made.
- 61-105.P(3), (3)(a) &

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- (3)(b) Deleted the word “Reserved,” and new text was added related to transporters accepting loaded and sealed trailers from brokers or generators.
- 61-105.Q(1)(a) Grammatical change for clarification and added language to minimize exposure to the public.
- 61-105.Q(1)(f) Revised to add language that the cargo carrying body doors must be closed tightly.
- 61-105.Q(1)(g) Stylistic change for clarification of the meaning of three inches. No other changes were made.
- 61-105.Q(2) Stylistic change - replaced wording “both wastes” to “each waste” and “wastes” to “waste.”
- 61-105.R(2)(b) Revised to delete language “and total weight” and also “the” for clarification.
- 61-105.R(3) Stylistic change for clarification of meaning. Replaced wording “off-loaded to be treated.” to “unloaded for treatment.”
- New 61-105.R(8) through R(8)(c) N New subitem added related to all transporters and management companies who would list themselves as a generator of the waste.
- 61-105.S(1) Revised to delete wording “transported” and “disposed” for clarification.
- 61-105.S(1)(c)&(d) Subitems relating to number of generators and their addresses from where the waste is accepted were deleted.
- Existing
61-105.S(1)(e) Renumbered existing “61-105.S(1)(e)” stylistically to “61-105.S(1)(c)” and deleted wording “in South Carolina and from all out-of-state generators, by state of origin, which were delivered to this state.”
- Existing
61-105.S(1)(f),(g)&(h) These existing subitems are renumbered stylistically to “61-105.S(1)(d), (e) & (f). No changes were made to the text.
- 61-105.T(2)(a) Stylistic change. Replaced wording “State” by “state.” No other changes were made.
- 61-105.T(5)(a) Revised to add language for treatment of infectious waste.
- 61-105.T(7) Stylistic change. Replaced wording “wastes” to “waste” No other changes were made.
- 61-105.T(8) Stylistic change. Revised for clarity to replace wording “on-site” to “by an approved method onsite,” and replace wording “by an approved method onsite,” to “on-site” - does not change legal meaning.
- 61-105.T(10) Revised to delete requirements for cultures and stocks and adding in requirements for treating products of conception.
- 61-105.U(3) Stylistic change for clarification by inserting wording “treatment residue.”
- 61-105.U(4)(d) Grammatical stylistic change to replace wording “recordkeeping” to “record keeping.”

61-105.U(7)	Stylistic punctuation change.
61-105.U(7)(c)	Revised to add in a time line for cleaning up spills.
61-105.U(7)(e)	Stylistic change to clarify telephone number “803-253” to “(803)253.”
61-105.U(9)	Revised to add language to clarify that the Department may transfer a permit to a new owner or operator if specific conditions are met.
61-105.U(10)(a)	Stylistic change to clarify name of DHEC bureau.
61-105.U(10)(e)	Revised to include language relating to radioactive material.
61-105.U(11)	Stylistic change. Revised to replace wording “off-site” to “offsite” and “on site” to “onsite.” No other changes.
61-105.U(12)	Stylistic change. Revised to replace wording “off-site” to “offsite.” Revised also to add introductory language for treatment facilities.
New 61-105.U(12) (a) & (b)	New subitems added to require treatment facilities to disinfect and clean out visible debris from the cargo-carrying body.
61-105.U(13)(c)	Revised to delete wording “must.”
61-105.U(14)	Stylistic punctuation change.
61-105.U(14)(a)	Stylistic change. Revised to replace wording “wastes” to “the waste.” And also, revised to extend time line for calibration for steam sterilization of treatment.
61-105.U(14)(b)	Stylistic change to replace wording “(250F)” to “(250 degrees Fahrenheit).”
61-105.U(15)	Revised to delete existing subsection “61-105.U(15).” This requirement will be replaced by “61-105.V.”
New 61-105.V	Inserted new section “61-105.V.” “Intermediate Handling Facilities Standards.”
Existing 61-105.V	Renumbered existing “61-105.V” stylistically to “61-105.W” Permit Applications and Issuance.
Existing 61-105.V(1)	Revised existing “61-105.V(1)”, now renumbered to “61-105.W(1)”, to clarify type of facility and that new construction cannot be permitted without obtaining an infectious waste management permit. Name of bureau was clarified.
Existing 61-105.V(2)	Revised existing “61-105.V(2)”, now renumbered to “61-105.W(2)”, by deleting language which placed a treatment cap on facilities.
Existing 61-105.V(4)	Revised existing “61-105.V(4)”, now renumbered to “61-105.W(4)”, by deleting language requiring submittal of a permit within 60 days of effective date. Clarifying that an ntermediate handling facility does not need to submit a demonstration of need.

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- Existing
61-105.V(5) Inserted new wording “61-105.V(5)”, now renumbered to “61-105.W(5)”, “Infectious Waste Management Permit.”
- Existing
61-105.V(7) Revised existing “61-105.V(7)”, now renumbered to “61-105.W(7)”, by adding language to include Intermediate Handling Facility requirements.
- Existing
61-105.V(7)(d) Revised existing “61-105.V(7)(d)”, now renumbered to “61-105.W(7)(d)”, by deleting language “and” also adding “100 year flood plain.”
- 61-105.V(7)(e) Revised existing “61-105.V(7)(e)”, now renumbered to “61-105.W(7)(e)”, to correct spelling of the word acknowledgment.
- 61-105.V(7)(f) Revised existing “61-105.V(7)(f)”, now renumbered to “61-105.W(7)(f)”, by adding the word “handling,” to the requirements of infectious waste.
- Existing
61-105.V(7)(I) Revised existing “61-105.V(7)(I)”, now renumbered to “61-105.W(7)(I)”, by adding language on how the waste should be managed to protect the waste from flood waters.
- Existing
61-105.V(7)(m) Revised existing “61-105V(7)(m)”, now renumbered to “61-105.W(7)(m)”, to clarify closure. Add new subitems 61-105.W(7)(m)(i) and (ii) to clarify estimated cost of closure.
- Existing
61-105.V(11) Revised existing “61-105.V(11)”, now renumbered to “61-105.W(11)”, by adding language to the permit requirements.
- Existing
61-105.V(12) Inserted new wording “61-105.V(12)”, now renumbered to “61-105.W(12)”, “Infectious Waste Management Permit.”
- Existing
61-105.V(15) Deleted this subsection item. Language deleted was inserted elsewhere in the regulation.
- Existing
61-105.W Renumbered existing “61-105.W” stylistically to “61-105.X” Permit By Rule.
- Existing
61-105.W(2)(a) Revised existing “61-105.W(2)(a)”, now renumbered to “61-105.X(2)(a)”, to clarify reference to section in regulation.
- Existing
61-105.W(2)(b) Stylistic change. Revised existing “61-105.W(2)(b)”, now renumbered to “61-105.X(2)(b)”, by replacing language “on-site” to “onsite.” No other changes.
- Existing
61-105.W(2)(e) Stylistic change. Revised existing “61-105.W(2)(e)”, now renumbered to “61-105.X(2)(e)”, by replacing language “within thirty (30) days of the effective date of this regulation” to “ before onsite treatment activities begin .”
- 61-105.W(3) Revised existing “61-105.W(3)”, now renumbered to “61-105.X(3)”, to clarify reference to section in regulation.
- Existing

61-105.W(4)	Revised existing “61-105.W(4)”, now renumbered to “61-105.X(4)”, to clarify reference to section in regulation.
Existing 61-105 X	Renumbered existing “61-105 X” stylistically to “61-105.Y” Manifest Form Requirements For Permitted Treatment Facilities.
Existing 61-105.X(1)	Stylistic change. Revise existing “61-105.X(1)”, now renumbered to “61-105.Y(1)”, by replacing language “off-site” to “offsite.” No other changes.
Existing 61-105.X(2)(c)	Revised existing “61-105.X(2)(c)”, now renumbered to “61-105.Y(2)(c)”, by deleting language “, or weight” for clarification.
Existing 61-105.X(2)(g)	Revised existing “61-105.X(2)(g)”, now renumbered to “61-105.Y(2)(g)”, by adding language “(as stated on manifest)” and also extending time line from “ten (10)” to “twenty-one (21) days.”
Existing 61-105.X(3)(a)	Revised existing “61-105.X(3)(a)”, now renumbered to “61-105.Y(3)(a)”, to revise existing language to clarify counting discrepancy of the waste.
Existing 61-105.X(3)(b)	Deleted existing language no longer enforcing the weight requirements.
Existing 61-105.X(3)(c)	Revised existing “61-105.X(3)(c)”, now renumbered to “61-105.Y(3)(b).” No other changes were made.
Existing 61-105.X(3)(d)	Renumbered existing “61-105.X(3)(d)” to “61-105.Y(3)(c)”. No other changes were made.
Existing 61-105.X(5)	Stylistic change. Revised existing “61-105.X(5)”, now renumbered to “61-105.Y(5)”, by replacing language “off-site” to “offsite” and replacing language “fifteen” to “fifteen (15)”
Existing 61-105.Y	Renumbered existing “61-105.Y” stylistically to “61-105.Z” Reporting For Permitted Treatment Facilities.
Existing 61-105.Y(2)(a)	Revised existing “61-105.Y(2)(a)”, now renumbered to “61-105.Z(2)(a)”, by deleting language “the types” - language obsolete.
Existing 61-105.Z	Renumbered existing “61-105.Z” stylistically to “61-105.AA.” Stylistic change to spelling of Record Keeping.
Existing 61-105.Z(2)	Revised existing “61-105.Z(2)”, now renumbered to “61-105.AA(2)”, Stylistic change only.
Existing 61-105.AA	Renumbered existing “61-105.AA” stylistically to “61-105.BB” Enforcement.
Existing 61-105.AA(2)(a)	Revised existing “61-105AA(2)(a)”, now renumbered to “61-105 BB(2)(a)”, for stylistic grammatical change. Also, the term “and” is changed to “and/or.”
Existing	

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61-105.BB Renumbered existing "61-105.BB" stylistically to "61-105.CC" Variances. No other changes.
Existing
61-105.DD Renumbered existing "61-105.DD" stylistically to "61-105.EE" Effective Date.

Instructions: Amend R.61-105 pursuant to each individual instruction provided with the text below:

Text:

Replace 61-105.A(3) to read:

(3) Generators, transporters, owners/operators of intermediate handling facilities and treatment facilities, or any other persons who generate, store, contain, transport, transfer, treat, destroy, dispose, or otherwise manage infectious waste in South Carolina shall comply with this regulation.

Replace 61-105.A(5) to read:

(5) In addition to the requirements of this regulation, generators, transporters, owners/operators of intermediate handling facilities and treatment facilities, or any other person shall comply with applicable Federal, State, county, and local rules, regulations, and ordinances.

Replace 61-105.D(1)(w) to read:

(w) "Hazardous waste" means a Resource Conservation and Recovery Act (RCRA) hazardous waste as defined in R.61- 79.261.3 of the S. C. Hazardous Waste Management Regulations.

Replace 61-105.D(1)(bb) to read:

(bb) "Offsite" means not onsite.

Replace 61-105.D(1)(cc) to read:

(cc) "Onsite" means the same or geographically contiguous property which may be divided by public or private right-of-way provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way.

Add new definition of "Product of Conception" to 61-105.D(1) in alphabetical order to 61-105.D(1)(ee) to read:

(ee) "Products of conception" means fetal tissues and embryonic tissues resulting from implantation in the uterus.

Replace definition of "Radioactive waste" at existing 61-105.D(1)(ee) and renumber section to 61-105.D(1)(ff) to read:

(ff) "Radioactive material" means any and all equipment or materials which are radioactive or have radioactive contamination and which are required pursuant to any governing laws, regulations or licenses to be disposed of or stored as radioactive material.

Renumber definition of "Release" at existing 61-105.D(1)(ff) to 61-105.D(1)(gg) to read:

(gg) "Release" means to set free from restraint or confinement.

Delete the following definition of “Solid Waste Collection Person” from 61-105.D(1)(hh). Text deleted reads:

(hh) “Solid Waste Collection Person” means any person engaged in the collection and off-site transportation of solid waste by air, rail, highway or water.

Add new definition of “Secured area” to 61-105.D(1) in alphabetical order to 61-105.D(1)(hh) to read:

(hh) “Secured area” means an area which is fenced with a locking gate or which is regularly patrolled by security personnel which prevents access by the general public. An area which has controlled access and barriers to prevent exposure of the general public.

Replace definition of “Solid waste” at existing 61-105.D(1)(gg) and renumber section to 61-105.D(1)(ii) to read:

(ii) “Solid waste” means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agriculture operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

Renumber definition of “State” existing 61-105.D(1)(ii) to 61-105.D(1)(jj) to read:

(jj) “State” means the State of South Carolina.

Replace definition of “Storage” existing 61-105.D(1)(jj), and renumber section to 61-105.D(1)(kk) to read:

(kk) “Storage” means holding of infectious wastes, either on a temporary basis or for a period of time, in a manner as not to constitute disposing of the wastes.

Renumber definition of “Supersaturated” existing 61-105.D(1)(kk) to 61-105.D(1)(ll) to read:

(ll) “Supersaturated” means the condition when any absorbent material contains enough fluid so that it freely drips that fluid or if lightly squeezed, that fluid would drip from it.

Renumber definition of “Transfer facility” existing 61-105.D(1)(ll) to 61-105.D(1)(mm) to read:

(mm) “Transfer facility” means any transportation related facility where shipments of infectious waste are held during the normal course of transportation, but are not off loaded or on loaded into fixed storage areas.

Renumber definition of “Transport” existing 61-105.D(1)(mm) to 61-105.D(1)(nn) to read:

(nn) “Transport” means the movement of infectious waste from the generation site to a treatment facility or site for intermediate storage and/or disposal.

Replace definition of “Transporter” existing 61-105.D(1)(nn), and renumber section to 61-105.D(1)(oo) to read:

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(oo) “Transporter” means a person engaged in the offsite transportation of infectious waste by air, rail, highway, or water.

Replace definition of “Transport vehicle” existing 61-105.D(1)(oo), and renumber section to 61-105.D(1)(pp) to read:

(pp) “Transport vehicle” means a method used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

Renumber definition of “Treatment” existing 61-105.D(1)(pp) to 61-105.D(1)(qq) to read:

(qq) “Treatment” means a method, technique, or process designed to change the physical, chemical, or biological character or composition of infectious waste so as to sufficiently reduce or eliminate the infectious nature of the waste.

Renumber definition of “Treatment facility” existing 61-105.D(1)(qq) to 61-105.D(1)(rr) to read:

(rr) “Treatment facility” means a facility which treats infectious waste to sufficiently reduce or eliminate the infectious nature of the waste.

Replace definition of “Universal biohazard symbol” existing 61-105.D(1)(rr), and renumber section to 61-105.D(1)(ss) to read::

(ss) “Universal biohazard symbol” means the symbol design that conforms to the design shown in 29 C. F. R. 1910.1030(g)(1)(I)(B).

Replace existing 61-105.E(1)(b) to read:

(b) Microbiologicals. Specimens, cultures, and stocks of human pathogenic agents, including but not limited to: waste which has been exposed to human pathogens in the production of biologicals; discarded live and attenuated vaccines; and culture dishes/devices used to transfer, inoculate, and mix microbiological cultures.

Replace existing 61-105.E(1)(d) to read:

(d) Pathological Waste. All tissues, organs, limbs, products of conception, and other body parts removed from the whole body, excluding tissues which have been preserved with formaldehyde or other approved preserving agents, and the body fluids which may be infectious due to bloodborne pathogens. These body fluids are: cerebrospinal fluids, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, semen, and vaginal/cervical secretions.

Replace existing 61-105.E(1)(f) to read:

(f) Isolation Wastes. All waste generated from communicable disease isolation of the Biosafety Level 4 agents, highly communicable diseases, pursuant to the ‘Guidelines for Isolation Precautions in Hospitals’, published by the Centers For Disease Control.

Replace existing 61-105.E(2)(b) to read:

(b) Radioactive material which is managed pursuant to the Department Regulation 61-63, Radioactive Material (Title A).

Replace existing 61-105.E(2)(f) to read:

(f) Human corpses, remains, products of conception, and anatomical parts that are intended to be interred, cremated, or donated for medical research. Teeth which are returned to a patient.

Replace existing 61-105.E(2)(g) to read:

(g) Infectious waste samples transported offsite by the EPA or the Department for possible enforcement actions or transportation of materials from other governmental response actions.

Replace existing 61-105.E(3) to read:

(3) The Department will determine how individual waste fits into the definitions and/or categories.

Replace existing 61-105.F(1). Existing 61-105.F(1)(a) and (b) remain the same:

(1) All in-state generators of infectious waste shall register with the Department in writing on a Department approved form. Registration will be in a manner prescribed by the Department. Registration notices will include at a minimum:

Replace 61-105.F(1)(c) to read:

(c) physical location of the site of waste generated (each site of waste generated must apply separately);

Add new 61-105.F(1)(d); the text of existing 61-105.F(1)(d) remains the same but is renumbered to 61-105.F(1)(e); add new 61-105.F(1)(f); the text of existing 61-105.F(1)(e) remains the same but is renumbered to 61-105.F(1)(g). New items added read:

(c) physical location of the site of waste generated (each site of waste generated must apply separately);

(d) mailing address of the site of generation;

(e) telephone number of the site;

(f) a contact name of the infectious waste coordinator; and

(g) the categories and amount of infectious waste generated annually (estimated within + or - 20%).

Replace 61-105.F(3) to read:

(3) Renewal of registration will be every three (3) years for generators and every five (5) years for small quantity generators. Registered generators will be notified of renewal requirements by the Department.

Replace 61-105.F(5) to read:

(5) Each generator must have a designated infection control committee with the authority and responsibility for infectious waste management. This committee must develop or adopt a written protocol to manage the infectious waste stream from generation to disposal. The written protocol must include contingency plans and a Quality Assurance program to monitor their own onsite treatment procedures. Small quantity generators are not required to have an infection control committee or a written protocol.

Replace 61-105.F(6)(b) and (c) to read:

(b) assure proper packaging and labeling of waste to be transported offsite as required in Section I and J, respectively, of this regulation;

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(c) initiate the manifest if waste is to be transported offsite as outlined in Section M of this regulation;

Add New 61-105.F(6)(d) to read:

(d) prevent infectious waste containing radioactive material which is distinguishable from background from leaving the site of generation when the material is under the jurisdiction of the United States Nuclear Regulatory Commission or an Agreement State;

Renumber existing 61-105.F(6)(d) to (e) and replace text. Renumber existing 61-105.F(6)(e) to (f):

(e) maintain records as required by this regulation in Section AA.

Renumber existing 61-105.F(6)(f) to (g) and replace text to read:

(g) manage infectious waste in a manner which prevents exposure to the public or release to the environment; and

Renumber existing 61-105.F(6)(g) to (h) and replace text to read:

(h) treat infectious waste onsite or offer infectious waste for offsite transport only to a transporter who maintains a current registration with the Department.

Delete text of 61-105.F(7). Deleted text reads:

(7) All in state and out-of-state generators must receive written authorization annually from the Department prior to shipping infectious waste off-site to a destination facility which is located in this state.

(a) To receive written authorization, all generators must apply in writing for such authorization, supply all relevant information required by the Department, and pay a fee as specified in the Fees Section. Request for authorization will include at a minimum:

- (i) name of the business;
- (ii) name of the owner and responsible party if different;
- (iii) address of the site of generation (each site of generation must apply separately);
- (iv) telephone number of the site; and
- (v) the categories and amount of infectious waste generated annually (estimated within + or - 20%).

(b) This authorization may be revoked for noncompliance with this regulation, the Infectious Waste Management Act, or other good and sufficient cause.

(c) If authorization is revoked, a generator's authorization may not be reissued for a period of one (1) year.

Replace text of 61-105.F(7) to read:

(7) When a site of a waste generator relocates, closes or ceases to generate infectious waste, all infectious waste must be disposed of in accordance with this regulation.

Replace 61-105.G(1)(a) to read:

(a) the provisions of Section E and F, except Section F(4); (5) and 6(h); and

Replace 61-105.G(1)(b) introductory only; subitem 61-105.G(1)(b)(i) remains the same:

(b) the management of the following infectious waste:

Replace 61-105.G(1)(b)(ii); subitem 61-105.G(1)(b)(iii) remains the same:

(ii)microbiological cultures, products of conception, and human blood and blood products must be managed pursuant to this regulation; and

Replace 61-105.G(2)(c) to read:

(c) the waste is not transported in the passenger compartment of the vehicle and is in a fully enclosed compartment which protects the container from weather conditions which would compromise the integrity of the container.

Replace 61-105.G(3) to read:

(3)If a small quantity generator offers infectious waste for transport offsite for treatment at a destination facility, the waste must be managed pursuant to Sections H through EE of this regulation.

Replace 61-105.H to read:

(H) Generators shall segregate infectious waste from solid waste as close to the point of generation as practical to avoid commingling of the waste. If infectious waste is put in the same container as other waste, or if solid waste is put into a container labeled as infectious waste, the entire contents of the container shall be managed as infectious waste unless hazardous and/or radioactive material regulations apply, then the most stringent regulations apply as outlined in Section E (2) (a), (b), and (c).

Replace 61-105.I(1) to read:

(1)Generators shall assure that infectious waste is properly packaged before transporting or offering for transport offsite.

Replace 61-105.I(3) to read:

(3)All other types of infectious waste must be placed, stored, and maintained before and during transport in a rigid or semirigid, leak proof container which is impervious to moisture.

Replace 61-105.I(7) to read:

(7)Dumpsters, trailer bodies or other vehicle containment areas do not constitute a rigid containment system but are only a transport mechanism.

Replace 61-105.I(8) to read:

(8)Infectious waste must be contained in disposable or reusable containers that are appropriate for the type and quantity of waste, must withstand handling, transfer, and transportation without impairing the integrity of the container, must be closed tightly and securely, and must be compatible with selected storage, transportation, and treatment processes.

Delete text of existing 61-105.I(9) and renumber 61-105.I(10) and (11) to 61-105.I(9) and (10). Text deleted reads:

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(9) If infectious waste is released from a container during storage, handling, and/or transport, it will be deemed improperly packaged by the generator unless it can be determined by the Department that the transporter or treatment facility improperly transported or improperly handled the waste.

ReNUMBER existing 61-105.I(12) to 61-105.I(11) and replace text in its entirety to read:

(11) Exempt or excluded waste shall not be packaged as infectious waste. Waste packaged as infectious waste must be managed as infectious waste, except as indicated in Section I(12).

Add new 61-105.I(12) to read:

(12) When infectious waste is treated by a technology which does not change the appearance of the bag or outer container, it shall be clearly labeled with the word "Treated" and the date of treatment on the outside of the container to indicate that the waste was properly treated. This labeling method may be hand written, an indicator tape or chemical reaction. The labeling process shall be water-resistant and indelible.

Replace 61-105.J(2) and J(2)(a), J(2)(b) and J(2)(e); remaining subitems J(2)(c), J(2)(d), and J(2)(f) remain the same:

(2) Containers of infectious waste offered for transport offsite must be labeled on outside surfaces so that it is readily visible with:

(a) the universal biohazard symbol sign as specified in 29 CFR 1910.1030(g)(1)(I)(B);

(b) the name or Department issued number of the in-state generator;

(e) the date the container was placed in storage or sent offsite, if not stored; and

Replace 61-105.K(1) only; existing subitems K(1)(a), (b), and (c) remain the same:

(1) Storage shall be in a manner and location which affords protection from animals, vectors, weather conditions, theft, vandalism and which minimizes exposure to the public.

Replace 61-105.K(4) to read:

(4) Storage areas must be labeled with the universal biohazard symbol sign as specified in 29 CFR 1910.1030(g)(1)(I)(B) and the words Infectious Waste, Medical Waste, or Biohazardous Waste.

Delete existing text 61-105.K(5) subitems K (5)(a) through K(5)(e) and replace it with K(5)(a) through (d) to read:

(a) Generator onsite storage shall not exceed fourteen (14) days without refrigeration or thirty (30) days if maintained at or below 42 degrees Fahrenheit.

(b) Once infectious waste leaves the generator site, the waste must be delivered to a treatment facility within fourteen (14) days without refrigeration or thirty (30) days if maintained at or below 42 degrees Fahrenheit.

(c) Treatment facility onsite storage shall not exceed fourteen (14) days at ambient temperature or thirty (30) days if maintained below 42 degrees Fahrenheit; and.

(d) Once infectious waste is stored in a refrigerated or frozen state by a generator, an intermediate handling facility operator, a transfer facility operator, or a transporter, the waste shall be maintained in that refrigerated or frozen state until treatment at a permitted treatment facility.

Delete text of 61-105.K(5)(f). Text deleted reads:

(f) Treatment facilities must store infectious waste below 42 degrees Fahrenheit and cannot store this waste in excess of forty-eight (48) hours.

Replace 61-105.K(6) to read:

(6) All floor drains in storage areas must discharge into a Department approved sanitary sewer system or be transported to a Department approved sewerage treatment facility or permitted infectious waste treatment facility.

Replace 61-105.L(2) to read:

(2) Disinfection can be accomplished by appropriate use of an EPA registered disinfectant used according to the label instructions at the tuberculocidal strength.

Replace 61-105.M(1), M(1)(a), M(1)(b), M(1)(c), M(1)(f), M(1)(g) and M(1)(k). Remaining subitems M(1)(d), (e), (h), (i), (j), (l) and (m) remain the same:

(1) A generator who transports, or offers for transport, infectious waste for offsite treatment, storage, or disposal, must prepare a manifest on a form approved by the Department and filled out in a legible manner according to the instructions for that form. The manifest form must accompany the waste at all times after leaving the generator's facility. The manifest form will include, but is not limited to:

(a) the name of the generator, the Department identification number (if located in S.C.), and address of the premises where the waste was generated;

(b) a general description of the nature of the waste being shipped;

(c) the number of containers of waste (accurate to within one (1) percent);

(f) a certification by the generator that the shipment does not contain regulated quantities of hazardous waste as defined by the S.C. Hazardous Waste Management Regulations;

(g) a certification by the generator that the shipment does not contain radioactive material above levels determined in Section F(6)(d) of this Regulation;

(k) the date the treatment facility received the shipment onsite;

Replace 61-105.M(2) to read:

(2) The generator who offers regulated infectious waste for transport offsite shall initiate the manifest required in (1) above.

Replace 61-105.M(3) to read:

(3) This generator shall sign by hand where required in (1)(e), (f), and (g) above.

Replace 61-105.M(5) to read:

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(5) The generator shall notify the Department in writing if he does not receive a completed manifest appropriately signed from the destination facility within fifty (50) days after offering for transport.

Replace 61-105.N(1) to read:

(1) Transporters of infectious waste which is generated, stored, transferred or treated within South Carolina must be registered with the Department prior to such activity unless otherwise provided by this regulation.

Replace 61-105.N(2) to read:

(2) Generators who transport their own infectious waste offsite, except those generators who qualify as small quantity generators in Section G of this regulation, must also comply with all applicable transporter requirements of this regulation.

Replace existing 61-105.N(3) introductory and add new 61-105.N(3)(a) and (b) to read:

(3) Transporters of infectious waste must comply with all applicable requirements of this regulation during transportation and when the waste is at a transfer facility.

(a) infectious waste may be transferred from one vehicle to another only at a designated transfer facility; and

(b) infectious waste may not be unloaded into fixed storage at a transfer facility.

Replace 61-105.N(4) to read:

(4) Transporters must also comply with the requirements of Sections I and J when they repack defective boxes of infectious waste.

Replace 61-105.N(12) to read:

(12) Reserved.

Replace 61-105.O(1)(a) and (b) to read:

(a) the transporter's name and mailing address;

(b) the name, address, and telephone number for each intermediate handling facility, transfer facility, or transportation related site that the transporter will operate at in South Carolina;

Add new 61-105.O(2)(a) and (b) to read:

(a) Transporters must notify the Department in writing within thirty (30) days if any changes occur in the information required for registration as outlined in (1) above or if they terminate their business; and

(b) Transporters who fail to re-register by the expiration date of their registration must cease all infectious waste transport activities on the expiration date.

Add new 61-105.O(6) to read:

(6) Transporters which neither pick up infectious waste nor deliver infectious waste within this state are exempt from registration.

Replace 61-105.P(1)(c) to read:

(c) accompanied by a properly completed manifest, as required in Section R.

Replace 61-105.P(2)(a) to read:

(a) the transporter's Department issued identification number, or the transporter's name, address, and phone number; and

Replace existing 61-105.P(3) introductory and add new 61-105.P(3)(a)(b) and (c) to read:

(3) If the transporter accepts loaded and sealed trailers from a broker or generator, that transporter does not have to assure proper packaging as required in Section I or proper labeling as required in Section J. However, the transporter must:

(a) assure that the load is accompanied by a properly completed manifest; and

(b) prevent discharges of infectious waste, especially fluids, from the cargo-carrying body.

Replace 61-105.Q(1)(a) to read:

(a) the vehicle shall have a fully enclosed, leak proof cargo-carrying body which protects the waste from animals, vectors, and weather conditions, and minimizes exposure to the public;

Replace 61-105.Q(1)(f) to read:

(f) the cargo-carrying body shall have doors which close tightly and can be sealed with a tamper resistant seal or otherwise secured if left unattended while carrying infectious waste;

Replace 61-105.Q(1)(g) to read:

(g) identification must be permanently affixed to the cargo-carrying body on two sides and the back in letters a minimum of three (3) inches in height which state:

Delete text of 61-105.Q(1)(h). Text deleted reads:

(h) vehicles used to transport, store, or otherwise manage infectious waste must be used exclusively for the purpose of waste transport and are not allowed to be used for any other purpose except to store materials used in conjunction with the transportation of infectious waste.

Replace 61-105.Q(2) to read:

(2) If a transporter transports or stores infectious waste and other solid waste in the same cargo-carrying body, each waste must be managed as infectious waste unless the waste is subject to Section (E)(2)(c).

Replace 61-105.R(2)(b) to read:

(b) certify that the manifest accurately reflects the number of containers being transported by signing and dating the manifest; and

Replace 61-105.R(3) to read:

(3) The transporter, transfer facility operator, and/or intermediate handling facility operator shall ensure that the manifest form accompanies the infectious waste at all times until unloaded for treatment.

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Add new 61-105.R(8), 61-105.R(8)(a), (b) and (c) to read:

(8) All transporters and/or management companies which list themselves as the generator on the manifest or a consolidated manifest must assume full responsibility of the generator(s) and must:

(a) attach a copy of the completed new manifest form to the original manifest form and retain a copy of the new and original manifest form;

(b) return a copy of each manifest form to the original generator(s) within seven (7) days of receipt of the new manifest form (copy 1) from the destination facility; and

(c) maintain a transporter consolidation log indicating all shipments that have been consolidated.

Replace 61-105.S(1) introductory; subitems 61-105.S(1)(a) and (b) remain the same.

(1) A transporter who accepts infectious waste which is to be stored, transferred, treated, or otherwise managed in South Carolina shall submit an infectious waste transporter annual report each year to the Department on a form available from the Department. The infectious waste transporter annual report information shall include at a minimum:

Delete existing 61-105.S(1)(c) and (d). Text deleted reads:

(c) the total number of generators from whom the transporter accepted infectious waste during that calendar year;

(d) the name, address, and type of generator from whom waste was accepted;

Renumber existing 61-105.S(1)(e) to 61-105.S(1)(c) and replace text to read.

(c) the total weight in pounds of infectious waste accepted from all generators by state of origin;

Renumber subitem 61-105.S(1)(f) to 61-105.S(1)(d) to read:

(d) the name, and address of each destination facility to which waste was delivered;

Renumber existing 61-105.S(1)(g) to 61-105.S(1)(e) and replace text to read:

(e) the weight in pounds that was delivered to each destination facility; and

Renumber subitem 61-105.S(1)(h) to 61-105.S(1)(f) to read:

(f) a certification on the transporter report signed by hand by the owner or operator, or his authorized agent declaring:

“ I certify under penalty of law that I have personally examined and that I am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment.”

Replace 61-105.T(2) introductory; subitems 61-105.T(2)(a) through (d) remain the same:

(2) Treatment must be by one of the following treatment methods in accordance with this regulation and other applicable state and federal laws and regulations:

Replace 61-105.T(5)(a) to read:

(a) an approved liquid or semi-liquid waste other than microbiological cultures and stocks may be discharged directly into a Department approved wastewater treatment disposal system; and

Replace 61-105.T(7) to read:

(7) It is unlawful for any person to discharge infectious waste or treated infectious waste into the environment of this State except as permitted by the Department.

Replace 61-105.T(8) to read:

(8) Small quantity generators may treat, by an approved method onsite, infectious waste which they generate onsite without being permitted as a treatment facility.

Replace 61-105.T(10) to read:

(10) Products of conception must be incinerated, cremated, interred, or donated for medical research.

Replace 61-105.U(3) to read:

(3) Infectious waste treatment residue must not be disposed of until or unless Department approved monitoring methods confirm effectiveness of the treatment process.

Replace 61-105.U(4)(d) to read:

(d) receiving, record keeping, and reporting procedures;

Replace 61-105.U(7)(c) to read:

(c) pick up, repackage as required or otherwise immediately remove the spilled material into the treatment system;

Replace 61-105.U(7)(e) to read:

(e) report to the Department any spill greater than one gallon or one cubic foot of dry waste immediately by calling the 24-Hour Emergency Spill Telephone Number, (803) 253-6488.

Replace 61-105.U(9) to read:

(9) Permittees shall notify the Department in writing within thirty (30) days prior to any changes in ownership, operating control, name, or location. The Department may upon written request transfer a permit to a new owner or operator where no other change in the permit is necessary provided that a written agreement containing a specific date for transfer of permit responsibility and financial assurance between the current and new owner has been submitted to the Department.

Replace 61-105.U(10)(a) to read:

(a) use instrumentation which is approved by the Division of Radioactive Waste Management for this purpose;

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Replace 61-105.U(10)(e) to read:

(e) report any and all incidents when radioactive materials are detected to the Division of Radioactive Waste Management for guidance in dealing with the radioactive materials. The Department may allow a treatment facility to hold containers of waste containing radioactive material for radioactive decay after the facility has submitted procedures for appropriately managing the containers and has received approval from the Department. However, under no circumstance may a treatment facility solicit the receipt of radioactive material.

Replace 61-105.U(11) to read:

(11) Facilities shall schedule shipments of waste to prevent a backlog of loaded transportation vehicles at the facility or offsite. The number of loaded and unloaded transport vehicles stored onsite will be controlled by permit conditions.

Replace existing 61-105.U(12) introductory and add new 61-105.U(12)(a) and (b) to read:

(12) A facility receiving waste generated offsite must log-in transport vehicles as they arrive at the facility in a bound log book and note in this book if any shipments are rejected. The treatment facility must:

- (a) disinfect the cargo-carrying compartment(s) immediately after unloading the waste; and
- (b) clean out visible debris and immediately put debris into the treatment system.

Replace 61-105.U(13) introductory only; subitems 61-105.U(13)(a) and (b) remain the same:

(13) Incinerators must, in addition to items (1) through (12) above:

Replace 61-105.U(13)(c) to read:

(c) receive authorization for disposal of treatment residue from the Department prior to disposition into a landfill located in this state, and said authorization shall be based on relevant analyses and requirements deemed necessary by the Department. Such authorization may be incorporated into a landfill permit.

Replace 61-105.U(14) introductory and 61-105.U(14)(a) and (b); subitems 61-105.U(14)(c) through (g) remain the same:

(14) All steam sterilizers must, in addition to items (1) through (12) above_

(a) use Department approved indicator organisms in test runs to assure proper treatment of the waste. Indicator organisms must be used daily at a commercial facility and monthly at a generator facility in each steam sterilizer;

(b) record the temperature and time during each complete cycle to ensure the attainment of a temperature of 121 degrees Centigrade (250 degrees Fahrenheit) for 45 minutes or longer at fifteen (15) pounds pressure, depending on quantity and density of the load, in order to achieve sterilization of the entire load; (Thermometers shall be checked for calibration at least annually.)

Delete text of 61-105.U(15). Text deleted reads:

(15) Intermediate handling facilities shall in addition to the other applicable requirements comply with items (4), (5), (6), (7), (8), (9), (11), and (12) of this section.

Add new section 61-105.V to read:

(V) Intermediate Handling Facilities Standards.

(1) All intermediate handling facilities must develop and submit to the Department for approval a standard operating procedure manual which will include at a minimum:

- (a) unloading and handling procedures;
- (b) safety procedures;
- (c) emergency preparedness and response plans;
- (d) receiving, record keeping, and reporting procedures;
- (e) remedial action plans;
- (f) procedure for treatment of spills;
- (g) radiological and hazardous waste monitoring procedures;
- (h) procedures for identifying types and quantities of infectious waste received;
- (i) contingency plans for use of alternate facilities; and
- (j) procedures for disposition of treatment residues.

(2) Approval for acceptance of infectious waste at an intermediate handling facility may be withdrawn by the Department for noncompliance with the standard operating procedure manual.

(3) When a facility ceases infectious waste management activities, it shall notify the Department in writing, immediately, and it shall thoroughly clean and disinfect the facility and all equipment used in the handling of infectious waste. All untreated waste shall be disposed of in accordance with the requirements of this regulation.

(4) In the event of an accidental spill of infectious waste, the designated personnel at the facility shall:

- (a) contain the spill to the area immediately affected;
- (b) immediately disinfect the area which is contaminated;
- (c) immediately pick up and repackage as required or treat the spilled material;
- (d) record the incident in a bound log book, including the quantity spilled, personnel involved, and the nature and consequences of the event; and
- (e) report to the Department any spill greater than one gallon or one cubic foot of dry waste immediately by calling the 24-Hour Emergency Spill Telephone Number, (803) 253-6488.

(5) All employees involved with handling and management of waste shall receive thorough training in their responsibilities and duties. A training protocol shall be submitted to the Department at the time of application for a permit. Training documentation for employees shall be submitted to the Department within thirty (30) days of completion.

(6) Permittee shall notify the Department in writing within thirty (30) days prior to any changes in ownership, operating control, name, or location. The Department may upon written request transfer a permit to a new owner

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or operator where no other change in the permit is necessary provided that a written agreement containing a specific date for transfer of permit responsibility and financial assurance between the current and new owner has been submitted to the Department.

(7) Facilities shall schedule shipments of waste to prevent a backlog of loaded transportation vehicles at the facility or offsite. The number of loaded and unloaded transport vehicles stored onsite will be controlled by permit conditions.

(8) A facility receiving waste generated offsite must log-in transport vehicles as they arrive at the facility in a bound log book and note in this book if any shipments are rejected. The intermediate handling facility must:

- (a) disinfect the cargo-carrying compartment(s) immediately after unloading the waste; and
- (b) clean out visible debris and immediately put debris into the treatment system.

Renumber existing 61-105.V section to 61-105.W section.

Replace text of renumbered existing 61-105.V(1) to 61-105.W(1) to read:

(1) No person may expand or construct a new treatment facility without obtaining an Infectious Waste Management permit issued by the Department. To obtain a permit, the applicant shall demonstrate the need for such a facility or expansion. To determine if there is a need, infectious waste generated outside of the state may not be considered without Department approval.

Replace text of renumbered existing 61-105.V(2) to 61-105.W(2) to read:

(2) The Department will determine and publish annually an estimate of the amount of infectious waste to be generated in South Carolina during the ensuing twelve months.

Replace text of renumbered existing 61-105.V(4) to 61-105.W(4) to read:

(4) No person may expand or construct a new intermediate handling facility without an Infectious Waste Management permit issued by the Department. Intermediate handling facility permit applicants do not have to demonstrate a need.

Replace text of renumbered existing 61-105.V(5) to 61-105.W(5) to read:

(5) To obtain an Infectious Waste Management Permit the person must complete a permit application as designed by the Department and pay a fee as specified in the fees section. Permit applications will not be processed until they are deemed complete by the Department.

Replace text of renumbered existing 61-105.V(7) to 61-105.W(7) to read:

(7) In addition to other requirements, a permit application for a treatment facility or intermediate handling facility must include at a minimum:

Replace text of renumbered existing 61-105.V(7)(d) to 61-105.W(7)(d) to read:

(d) a topographic map (or similar map) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its infectious waste management, treatment, storage, or disposal facilities; those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the quarter-mile of the facility property boundary; and the 100-year flood plain;

Replace text of renumbered existing 61-105.V(7)(e) to 61-105.W(7)(e) to read:

(e) a written acknowledgment from the governing body of the city or town, and/or county in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances;

Replace text of renumbered existing 61-105.V(7)(f) to 61-105.W(7)(f) to read:

(f) a description of the process to be used for treating, storing, handling, transporting and disposing of infectious waste, and the design capacity of these items;

Replace text of renumbered existing 61-105.V(7)(i) to 61-105.W(7)(i) to read:

(i) a contingency plan describing a technically and financially feasible course of action to be taken in response to contingencies which may occur during construction and operation of the facility to include a description of how the waste will be managed to protect the waste from flood waters.;

Replace text of renumbered existing 61-105.V(7)(m) to 61-105.W(7)(m) to read:

(m) a closure plan which includes the estimated cost of closure;

Replace text of renumbered existing 61-105.V(7)(m)(i) to 61-105.W(7)(m)(i) to read:

(i) a closure cost estimate which must be based on the cost of hiring a third party to close the facility; and

Replace text of renumbered existing 61-105.V(7)(m)(ii) to 61-105.W(7)(m)(ii) to read:

(ii) a cost estimate which may not include any salvage value from the sale of any structures, equipment, and other assets.

Replace text of renumbered existing 61-105.V(11) to 61-105.W(11) to read:

(11) Permits will be valid for the period stated on the permit. If the application for renewal is received as above, the permit will continue in force until the Department makes a permit decision.

Replace text of renumbered existing 61-105.V(12) to 61-105.W(12) to read:

(12) As a condition of approval for an Infectious Waste Management Permit, any person who owns or operates a facility or group of facilities for the treatment, storage, or disposal of infectious waste must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from the operation of the facility or group of facilities and assure the satisfactory maintenance, closure, and postclosure care of any facility or group of facilities, and to carry out any corrective action which may be required by the Department. Such form and amount of financial responsibility shall be a permit condition specified by the Department. At any time, should the Department determine that the levels of financial responsibility required are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Department may adjust the level of financial responsibility required as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities.

Delete existing 61-105.V(15) Text deleted reads:

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(15) Intermediate handling facilities shall obtain a permit from the Department to manage infectious waste. To apply for said permit the owner/operator must in addition to other applicable requirements comply with items (4), (5), (6), (8), (9), (10), (11), (12), (13), and (14).

Renumber existing 61-105.W section to 61-105.X section.

Renumber and replace text of existing 61-105.W(2)(a) to 61-105.X(2)(a) to read:

(a) comply with all parts of this regulation except permitting procedures of Section W.

Renumber and replace text of existing 61-105.W(2)(b) to 61-105.X(2)(b) to read:

(b) demonstrate that more than seventy-five (75) percent (by weight, in a calendar year) of all infectious waste that is stored, treated or disposed of by the facility is generated onsite.

Renumber and replace text of existing 61-105.W(2)(e) to 61-105.X(2)(e) to read:

(e) notify the Department in writing before onsite treatment activities begin.

Renumber and replace text of existing 61-105.W(3) to 61-105.X(3) to read:

(3) All other facilities not meeting the requirements of (2) above shall apply for an infectious waste treatment permit as outlined in Section W.

Renumber and replace text of existing 61-105.W(4) to 61-105.X(4) to read:

(4) Any facility deemed to have a permit by rule which fails to satisfy any of the conditions set forth in (2) above or this regulation may have its permit by rule revoked and must obtain a permit as outlined in Section W to continue to store, treat, or dispose of infectious waste.

Renumber existing 61-105.X section to 61-105.Y section.

Renumber and replace text of existing 61-105.X(1) to 61-105.Y(1) to read:

(1) Treatment facilities must not accept infectious waste to be treated, stored, or otherwise managed unless accompanied by a Department approved manifest form if the waste is generated offsite.

Renumber and replace text of existing 61-105.X(2)(c) to 61-105.Y(2)(c) to read:

(c) note any discrepancies greater than one (1) percent of the container count on the manifest;

Renumber and replace text of existing 61-105.X(2)(g) to 61-105.Y(2)(g) to read:

(g) send a copy of the completed manifest to the generator (as stated on the manifest), within twenty-one (21) days of delivery; and

Renumber and replace text of existing 61-105.X(3)(a) to 61-105.Y(3)(a) to read:

(a) any variation in piece count such as a discrepancy greater than one (1) percent of the box, pail, drum, or container count on a manifest;

Delete existing 61-105.X(3)(b) Text deleted reads

(b) any variation in weight;

Renumber existing subitems 61-105. X(3)(c) to subitems 61-105.Y(3)(b) to read:

(b) identification of packaging that is broken, torn, or leaking; and

Renumber existing subitems 61-105. X(3)(d) to subitems 61-105.Y(3)(c) to read:

(c) identification of infectious waste that arrives at a treatment facility which is not accompanied by a manifest, or which is accompanied by a manifest which is incorrect, incomplete, or not signed.

Renumber and replace text of existing 61-105.X(5) to 61-105.Y(5) to read:

(5) If a facility receives any infectious waste from offsite which is not accompanied by a manifest, the owner/operator must prepare and submit to the Department a written copy of a report within fifteen (15) days after receiving the waste. The "Unmanifested Waste Report" must include the following information:

Renumber existing 61-105.Y section to 61-105.Z section.

Renumber and replace text of existing 61-105.Y(2)(a) to 61-105.Z(2)(a) to read:

(a) a description of the sources by state, and amounts of infectious waste treated;

Renumber and replace text of existing 61-105.Z(2) to 61-105.AA(2) to read:

(2) If the waste is no longer infectious because of treatment, the generator or permitted facility shall maintain a record of the treatment for three (3) years afterward to include the date and type of treatment, amount of waste treated, and the individual operating the treatment. Records for onsite treatment and manifest from transporters for offsite treatment shall be maintained by the generator for a minimum of three (3) years in a location easily accessible to the Department and shall provide these records to the Department upon request.

Renumber existing 61-105.AA section to 61-105.BB section.

Renumber and replace text of existing 61-105.AA(2)(c) to 61-105.BB(2)(c) to read:

(c) reports or other information required by the Department have not been submitted or inaccurately submitted; and/or

Renumber existing 61-105.BB section to 61-105.CC and renumber subitems. No changes to text.

Delete existing text of 61-105.CC(2)(a), CC(2)(b), CC(3)(a), CC(3)(b) and CC(4). Deleted text reads:

(2)(a) Generators who dispose of infectious waste at an off-site permitted treatment facility in this State must apply for authorization for treatment and pay a fee according to the estimated amount to be disposed for the year. If a generator exceeds the specific authorized amount, the generator must pay the appropriate fee in addition to the amount initially paid. No credits will be given for amounts authorized, but unused.

(2)(b) Fees for generators are:

Amount (in tons per year) FEE (in \$s)
in-state small

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quantity generators No Fee

<0.3 25

0.3 - 99 100

100 - 249 250

250 - 499 500

500 - 999 1000

1000-1500 1500

>1500 \$1500 + \$5 per ton in excess of 1500 tons per year.

(3)(a) Transporters who transport infectious waste in this state must apply for registration and pay a fee according to the amount of waste transported during the year. If a transporter exceeds the specific authorized amount, the transporter must pay the appropriate fee in addition to the amount initially paid. No credits will be given for amounts authorized, but unused.

(3)(b) The fees for registration are:

Amount (in tons per year) FEE (in \$s)

<99 500

100 - 599 3000

600 -1199 6000

1200-1799 9000

1800-2499 12500

>2500 12500 + \$10 per ton for each ton in excess of 2500 tons per year.

(4) Fees for intermediate handling facilities and treatment facilities are due at the time of permit application. The fees are based on daily permitted capacity in tons. The fees are as follows:

Type of Facility FEE (in \$s)

Permit by Rule No Fee

Intermediate Handling Facility 100/ton

Permitted Treatment Facility 1000/ton

Renumber existing 61-105.CC(1) to 61-105.DD. Replace text of 61-105.CC, now renumbered to 61-105.DD, in its entirety to read:

(DD) An initial processing fee of \$25 will be due and payable when applying for a registration or a permit. The \$25 initial processing fee is not refundable. A registration or permit application will not be considered complete unless the fee accompanies said application. Only complete applications will be processed by the Department.

Renumber existing 61-105.DD to 61-105.EE. No changes in text.

Fiscal Impact Statement:

There will be minimal cost to the state and its political subdivisions. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

The Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose of Regulation: The purpose of this amendment is as follows: (1) Language no longer valid will be deleted and the regulation will be updated pursuant to the ruling of the United States District Court on January 20, 1994, declaring that certain provisions of R.61-105 were unconstitutional. (2) Infectious waste standards for generators, transporters, transfer stations and treatment facilities will be updated.

Legal Authority: The State primary infectious waste management regulations are authorized by S.C. Code Section 44-93-10 et. seq., Infectious Waste Management Act.

Plan for Implementation: The amendments will make changes to and be incorporated into R.61-105 upon approval of the General Assembly and publication in the *State Register*. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

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

On January 20, 1994, the United States District Court declared that certain provisions of R.61-105, Infectious Waste Management, were unconstitutional. This amendment deletes language no longer valid.

Additionally, the regulation was modified to reflect changes made by the federal government and new amendments to the Infectious Waste Management Act in the sections that apply to small quantity generators and treatment facilities. As well, minimal changes will be made to sections that apply to generators and transporters. Treatment facilities will be required to meet new standards, such as, disinfecting and cleaning the cargo-carrying bodies of vehicles.

DETERMINATION OF COST AND BENEFITS: There will be minimal cost to the state, its political subdivisions, and to the regulated community with the implementation of the proposed regulations.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments will promote public health by improving the management of infectious waste within the health care services community.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's Infectious Waste Management Regulations are believed to be beneficial to public health and the environment. There would be an adverse effect on the Department's ability to carry out its statutory mandate to ensure the proper management of infectious waste in a manner that is protective of public health and the environment.

Document No. 2444

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 48-1-30 through 48-1-60 *et seq.*

R.61-62.5, Standard Number 3.1, *Medical Waste Incineration*.

R.61-62.1, *Definitions and General Requirements*.

Synopsis:

The United States Environmental Protection Agency promulgated New Source Performance Standards (NSPS) and Emission Guidelines on September 15, 1997, to reduce air emissions from hospital/medical/infectious waste incinerator(s) (HMIWI). 40 CFR Part 60, Subpart Ec governs standards of performance for new or reconstructed

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HMIWI, and subpart Ce contains the emission guidelines for existing HMIWI. The standards and guidelines implement sections 111 and 129 of the Clean Air Act (CAA) as amended in 1990. The standards and guidelines apply to units whose primary purpose is the combustion of hospital waste and/or medical/infectious waste. The promulgated standards and guidelines establish emission limits for particulate matter (PM), opacity, sulfur dioxide (SO₂), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans. The standards and guidelines also establish requirements for HMIWI operator training/qualification, waste management plans, and testing or monitoring of pollutants and operating parameters, and equipment inspection requirements. States are required to implement these Federal requirements and guidelines within one year of promulgation date of the Federal regulation.

The Department has amended R.61-62.5, Standard Number 3.1, *Medical Waste Incineration*, and the South Carolina State Implementation Plan to incorporate and implement these Federal requirements. In addition, the Department revised some of the existing provisions of the State Medical Waste Incineration Regulation that were not Federally mandated. Also, the Department has amended R.61-62.1, *Definitions and General Requirements*, by adding new definitions to Section I, Definitions, and deleting existing definitions that are no longer applicable. The title of the existing Standard Number 3.1 regulation was changed to be more descriptive of the amended regulation. See Discussion of Proposed Revisions and Statement of Need and Reasonableness herein. Notices of Drafting for the proposed amendment were published on March 27, 1998, and March 26, 1999.

Discussion of Proposed Revisions

R.61-62.5, Standard Number 3.1, *Medical Waste Incineration*

SECTION CITATION

CHANGE:

Title	Regulation title changed from "Medical Waste Incineration" to "Hospital/Medical/Infectious Waste Incinerators."
Section I.	Section title changed from "Applicability" to "Applicability and General Requirements."
Section I.(a)	Renumbered and revised for consistency with Federal requirements.
Section I.(b)	Renumbered.
Section I.(c)	Existing language deleted and new language added for consistency with Federal requirements. Paragraph renumbered.
Section I.(d)	Existing language deleted. Language from Section II.A. moved and renumbered.
Section I.(e)	Existing language deleted. New language added for consistency with Federal requirements. Paragraph renumbered.
Section I.(f) and (g)	New language added for consistency with Federal requirements.
Section II.	Title changed from "General" to "Definitions."
Section II. A.	Existing language reworded and moved to Section I.(d).
Section II.B. through H.	Existing language in items B. through H. deleted.
Section II.(a) through (ii)	Definitions added that are specific to this Standard.

Section III.A. and B.	Existing language deleted.
Section III. (a) through (f)	Language and tables added that are consistent with Federal requirements for emissions limitations. Section renumbered.
Section IV.(a)	Renumbered and revised to reflect a decrease in the secondary chamber temperature retention time from two seconds to one second. This is a relaxation of the existing State regulation, but is consistent with requirements in other states.
Section IV.(b) through (i)	Renumbered and minor revisions made throughout.
Section V.A. though D. and F.	Existing State language for monitoring requirements deleted. Entire section renumbered.
Section V.(a)	New language added for consistency with Federal requirements.
Section V.(b)	New language added for consistency with Federal requirements for Small (Rural) facilities.
Section V.(c)	New language added for consistency with Federal requirements for Small (Urban), Medium, and Large HMIWI facilities.
Section V.(d)	New language added for consistency with Federal requirements for Large HMIWI facilities with capacity equal to or greater than 2,000 lb/hr and Table for operating parameters.
Section VI.	Title of Section VI changed from "Testing Requirements" to "Calibration and Quality Assurance of Monitoring Devices" which was previously Section VIII.
Section VI.(a)	Existing language from Section VIII.A. revised.
Section VI.B.	Existing language on specific monitoring devises is deleted.
Section VI.(b)	New language consistent with Federal requirements added to address initial calibration and quality assurance specifications for monitors.
Section VI.(c)	New language added for annual recalibration of monitors for CO, CO ₂ , O ₂ , and Opacity.
Section VII.	Title changed from "Recordkeeping and Reporting Requirements" to "Testing Requirements" which was previously Section VI. Section renumbered.
Section VII.(a)	Text revised for consistency with Federal requirements.
Section VII.B and C	Language on existing sources and new and modified sources deleted.
Section VII.(b)	Language added on testing requirements for existing sources consistent with Federal requirements. Section VII.(b)(5)(iii)(B) adds dioxins/furans to the list of pollutants for which compliance testing must be conducted. This

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additional testing requirement makes the regulation more stringent than the Federal rule.

Section VII.(c)	New language added on additional testing requirements for new, existing, and modified sources for consistency with Federal requirements. Section VII.(c)(2) consists of language on ash quality moved from Section XII of the existing State regulation.
Section VIII.	Section title changed from “Calibration and Quality Assurance of Monitoring Devices” to “Recordkeeping and Reporting Requirements” which was previously Section VII.
Section VIII.A. through F.	Existing State recordkeeping and reporting language deleted.
Section VIII.(a) through (k)	New language added to comply with Federal requirements for recordkeeping and reporting. Entire section renumbered.
Section IX.	Reserved section deleted and retitled as “Operator Training and Qualification Requirements” which was previously Section XI.
Section IX.(a) through (j)	Existing text deleted and replaced with new language consistent with Federal requirements for operator training and qualification requirements.
Section X.	Existing State Section X. title and language for “Ambient Impact Analysis” deleted. New Section title “Waste Management Plan” and new language added to comply with Federal requirements.
Section XI.	New Section title “Inspection Guidelines” and new language added for consistency with Federal inspection guideline requirements for small rural HMIWI facilities. The Department extended these requirements to apply to any size HMIWI facility. The extension of these requirements to any size incinerator makes the State rule more stringent than the Federal rule.
Section XII.	Existing State Section XII. Ash Quality revised and moved to Section VII.
Appendix A	Existing State Appendix A deleted and replaced with Appendix consistent with Federal requirements.
Appendix B	The heating value changed from 9,000 to 8,500 for consistency with Federal requirements. Steps 6 and 7 revised to incorporate a one-second secondary chamber temperature retention time.
Appendix C	Existing Appendix C deleted.

R.61-62.1, *Definitions and General Requirements*

Section I. Twelve new definitions added for consistency with Federal regulations. Existing definitions 35, 39, 40, and 41 are deleted. The entire definition section renumbered in alphanumeric order.

Instructions: Amend R.61-62.5, Standard 3.1, and R.61-62.1 pursuant to each individual instruction provided below with the text of the amendments.

Text of Proposed Amendment:**R.61-62.5, Standard 3.1 will be replaced in its entirety to read:**

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AIR POLLUTION CONTROL REGULATIONS

REGULATION NO. 61-62.5

AIR POLLUTION CONTROL STANDARDS

STANDARD NUMBER 3.1

HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS (HMIWI)

Section I - Applicability and General Requirements.

- (a) This Standard applies to any device, regardless of type or construction, which combusts hospital/medical/infectious waste.
- (b) This Standard is not applicable to crematory incinerators.
- (c) Beginning September 15, 2000, existing facilities subject to this regulation and not listed as an exempt source for 40 CFR 60 subpart Ec, *Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996* (September 15, 1997, 60 FR 48348), shall operate pursuant to a Title V permit issued by the Department.
- (d) An owner or operator shall not combust hospital/medical/infectious waste except in a multiple-chamber incinerator with a solid hearth, or in a device found to be equally effective for the purpose of air contaminant control as an approved multiple-chamber incinerator as determined by the Department.
- (e) Physical or operational changes to an existing HMIWI unit, for which construction was commenced on or before June 20, 1996, that are made solely for the purpose of complying with this regulation are not considered a modification and do not result in an existing HMIWI unit becoming subject to the provisions of 40 CFR 60 subpart Ec, *Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996* (September 15, 1997, 60 FR 48348).
- (f) All HMIWI are subject to this regulation. Those HMIWI for which construction or reconstruction commenced after June 20, 1996, are also subject to the provisions of 40 CFR part 60 subpart Ec, *Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996* (September 15, 1997, 60 FR 48348).
- (g) This Standard is not applicable to combustors which burn hospital waste and do not burn any medical/infectious waste and are subject to all provisions of 40 CFR 60 subpart Eb, *Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996*; subpart Cb, *Emission Guidelines and Compliance Times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994*; or subpart Ea, *Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994*.

Section II - Definitions.

Unless stated otherwise, the definitions that appear in this section shall apply only to this Standard.

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- (a) Batch HMIWI - a HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.
- (b) Continuous HMIWI - a HMIWI that is designed to allow waste charging and ash removal during combustion.
- (c) Dry scrubber - an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry powder material.
- (d) Fabric filter or baghouse - an add-on air pollution control system that removes particulate matter (PM) and nonvaporous metals emissions by passing flue gas through filter bags.
- (e) Facilities manager - the individual in charge of purchasing, maintaining, and operating the HMIWI or the owner's or operator's representative responsible for the management of the HMIWI. Alternative titles may include director of facilities or vice president of support services.
- (f) High-air phase - the stage of the batch operating cycle when the primary chamber reaches and maintains maximum operating temperatures.
- (g) Hospital/medical/infectious waste incinerator operator or HMIWI operator - any person who operates, controls or supervises the day-to-day operation of a HMIWI.
- (h) Infectious agent - any organism (such as a virus, bacteria or prion) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.
- (i) Intermittent HMIWI - a HMIWI that is designed to allow waste charging, but not ash removal, during combustion.
- (j) Large HMIWI-
 - (1) except as provided in (2),
 - (i) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or
 - (ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
 - (iii) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.
 - (2) the following are not large HMIWI:
 - (i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or
 - (ii) a batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.
- (k) Maximum charge rate-
 - (1) For continuous and intermittent HMIWI, 110 percent of the lowest three-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.
 - (2) For batch HMIWI, 110 percent of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(l) Maximum design waste burning capacity-

(1) For intermittent and continuous HMIWI,

$$C = P_v \times 15,000 / 8,500$$

where:

C= HMIWI capacity, lb/hr

P_v = primary chamber volume, ft^3

15,000= primary chamber heat release rate factor, Btu/ ft^3 /hr

8,500 = standard waste heating value, Btu/lb;

(2) For batch HMIWI,

$$C = P_v \times 4.5 / 8$$

where:

C= HMIWI capacity, lb/hr

P_v = primary chamber volume, ft^3

4.5 = waste density, lb/ ft^3

8 = typical hours of operation of a batch HMIWI, hours.

(m) Maximum fabric filter inlet temperature - 110 percent of the lowest three-hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the dioxins/furans emission limit.

(n) Maximum flue gas temperature- 110 percent of the lowest three-hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the mercury (Hg) emission limit.

(o) Medium HMIWI-

(1) except as provided in paragraph (2);

(i) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(iii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(2) the following are not medium HMIWI:

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(i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(ii) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

(p) Minimum dioxins/furans sorbent flow rate- 90 percent of the highest three-hour average dioxins/furans sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the dioxins/furans emission limit.

(q) Minimum mercury (Hg) sorbent flow rate- 90 percent of the highest three-hour average Hg sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the Hg emission limit.

(r) Minimum hydrogen chloride (HCl) sorbent flow rate- 90 percent of the highest three-hour average HCl sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

(s) Minimum horsepower or amperage- 90 percent of the highest three-hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the applicable emission limits.

(t) Minimum pressure drop across the wet scrubber- 90 percent of the highest three-hour average pressure drop across the wet scrubber PM control device (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM emission limit.

(u) Minimum scrubber liquor flow rate- 90 percent of the highest three-hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

(v) Minimum scrubber liquor pH- 90 percent of the highest three-hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

(w) Minimum secondary chamber temperature- 90 percent of the highest three-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, or dioxins/furans emission limits.

(x) Modification or Modified HMIWI- any change to a HMIWI unit after the effective date of these Standards such that:

(1) The cumulative costs of the modifications, over the life of the unit, exceed 50 percent of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or

(2) The change involves a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under Section 129 or Section 111 of the Clean Air Act.

(y) Operating day- a 24-hour period between 12:00 midnight and the following midnight during which any amount of hospital waste or medical/infectious waste is combusted at any time in the HMIWI.

(z) Operation- the period during which waste is combusted in the incinerator excluding periods of startup or shutdown.

(aa) Particulate Matter or PM - the total particulate matter emitted from a HMIWI as measured by EPA Reference Method 5 or EPA Reference Method 29.

(bb) Primary chamber- the chamber in a HMIWI that receives waste material, in which the waste is ignited, and from which ash is removed.

(cc) Prion - a small infectious pathogen containing protein which is resistant to procedures that modify or hydrolyze nucleic acids.

(dd) Secondary chamber- a component of the HMIWI that receives combustion gases from the primary chamber and in which the combustion process is completed.

(ee) Shutdown- the period of time after all waste has been combusted in the primary chamber. For continuous HMIWI, shutdown shall commence no less than two hours after the last charge to the incinerator. For intermittent HMIWI, shutdown shall commence no less than four hours after the last charge to the incinerator. For batch HMIWI, shutdown shall commence no less than five hours after the high-air phase of combustion has been completed.

(ff) Small HMIWI-

(1) except as provided in (2);

(i) an HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(ii) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(iii) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(2) the following are not small HMIWI:

(i) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(ii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

(gg) Standard Conditions - a temperature of 20° C and a pressure of 101.3 kilopascals.

(hh) Startup- the period of time between the activation of the system and the first charge to the unit. For batch HMIWI, startup is the period of time between activation of the system and ignition of the waste.

(ii) Wet scrubber- an add-on air pollution control device that utilizes an alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Section III - Emission Limitations.

(a) On and after the date on which the initial performance test is completed or is required to be completed as per Section VII of this Standard, whichever date comes first, no owner or operator of an affected facility shall cause

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to be discharged into the atmosphere from that affected facility any gases that contain stack emissions in excess of the limits presented in Table I below.

Table I
Emission Limitations for Small, Medium and Large Hospital/Medical/Infectious Waste Incinerators

Pollutant	Units (7% O ₂ basis, dry basis)	Small	Medium	Large
Particulate Matter (PM)	Milligrams per dry standard cubic meter (gr/dscf)	115 (0.05)	69 (0.03)	34 (0.015)
Carbon monoxide (CO)	ppmv	40	40	40
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet)	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)
Hydrogen chloride (HCl)	Ppmv or percent reduction	100 or 93%	100 or 93%	100 or 93%
Sulfur dioxide (SO)	ppmv	55	55	55
Nitrogen oxide (NO _x)	ppmv	250	250	250
Lead (Pb)	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	1.2 (0.52) or 70%	1.2 (0.52) or 70%	1.2 (0.52) or 70%
Cadmium (Cd)	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.16 (0.07) or 65%	0.16 (0.07) or 65%	0.16 (0.07) or 65%
Mercury (Hg)	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%

gr/dscf = grains per dry standard cubic foot

ppmv = parts per million by volume

TEQ = Toxic Equivalents Quantity

(b) No owner or operator of an affected facility shall cause to be discharged into the atmosphere from the stack of that affected facility any gases that exhibit greater than 10% opacity (six-minute rolling average) or equal to or greater than 30% at any time.

(c) No small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (defined in 40 CFR 60.31e, September 15, 1997, 60 FR 48348), and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste shall cause to be discharged into

the atmosphere from that affected facility any gases that contain stack emissions in excess of the limits presented in Table II. The 2,000 lb/week limitation does not apply during performance tests.

Table II
Emission Limitations for Small Rural Hospital/Medical/Infectious Waste Incinerators

Pollutant	Units (7% O ₂ basis, dry basis)	Small (Rural)
PM	Milligrams per dry standard cubic meter (gr/dscf)	197 (0.086)
CO	ppmv	40
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet)	800 (350) or 15 (6.6)
HCl	ppmv	3100
SO ₂	ppmv	55
NO _x	ppmv	250
Pb	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	10 (4.4)
Cd	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	4 (1.7)
Hg	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	7.5 (3.3)
Opacity	6 minute average	10%

gr/dscf = grains per dry standard cubic foot

ppmv = parts per million by volume

TEQ = Toxic Equivalents Quantity

(d) Large HMIWI with capacity greater than 2,000 lb/hr for continuous and 16,000 lb/day for batch shall complete an ambient impact analysis for: arsenic and compounds expressed as arsenic; beryllium and compounds expressed as beryllium; hexavalent chromium and compounds expressed as chromium; and nickel and compounds expressed as nickel.

(1) Using available emission factors, the emissions from the facility shall be estimated and the analysis shall be conducted by performing dispersion modeling using the facility's exhaust characteristics. The analysis shall be conducted in accordance with the procedures stipulated in the Air Quality Modeling Guidelines.

(2) The required analysis must show that predicted concentrations do not exceed the following applicable annual ambient concentrations.

Table III
Allowable Ambient Concentrations

Pollutant	Units	Allowable Ambient Concentration
Arsenic (As)	$\mu\text{g}/\text{m}^3$	2.3e-04
Beryllium (Be)	$\mu\text{g}/\text{m}^3$	4.2e-04
Hexavalent Chromium (Cr (+6))	$\mu\text{g}/\text{m}^3$	8.3e-05
Nickel (Ni)	$\mu\text{g}/\text{m}^3$	3.3e-03

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

(3) Compliance shall be verified by stack sampling as described in Section VII of this Standard. Using the actual stack parameters and emission rates from the most recent source test and Department approved modeling techniques, the calculated maximum annual ambient concentrations shall not exceed the above levels. The modeling methodology shall be submitted with the source test plans required by Regulation 61-62.1, Section IV., Source Tests. The applicant shall submit a Modeling Protocol to the Department and receive approval prior to starting any modeling study.

(e) Large HMIWI with capacity greater than 2,000 lb/hr for continuous and 16,000 lb/day for batch shall maintain a combustion efficiency of 99.9% or greater on an hourly basis. The combustion efficiency shall be calculated as follows:

$$\text{C.E.} = \frac{[\text{CO}_2]}{[\text{CO}_2] + [\text{CO}]} \times 100$$

C.E. = Combustion efficiency

$[\text{CO}_2]$ = Concentration of carbon dioxide (ppmv corrected to 7% O_2)

$[\text{CO}]$ = Concentration of carbon monoxide (ppmv corrected to 7% O_2)

Note: O_2 , CO_2 , and CO determined on a dry basis.

(f) Upon mutual agreement of an owner or operator of a HMIWI and the Department, an emission limit more restrictive than that otherwise specified in this Standard and/or an emission limit for any air contaminant discharged from the HMIWI that is not specified in this Standard may be established. Also, upon mutual agreement of the owner or operator of an affected source and the Department, operating hours, process flow rates, or any other operating parameter may be established as a binding limit for the affected source. Any items mutually agreed to shall be stated as a special condition for any permit or order concerning the source. Violation of this mutual agreement will be considered a violation and will be subject to appropriate enforcement.

Section IV - Performance Specifications.

(a) The owner or operator of an affected facility shall ensure that:

(1) The secondary chamber is maintained at a temperature equal to or greater than 1800° F. A thermocouple is appropriately located at the exit of the chamber to confirm the temperature.

(2) The temperature equal to or greater than 1800° F is maintained for at least one second (secondary chamber residence time). The ducting between the secondary chamber and heat recovery system or the breaching and portion of the stack (tertiary chamber) may not be included for the residence time demonstration.

(3) The auxiliary (secondary and/or tertiary) burners of the incinerator are designed such that without the assistance of the heat content of the waste, a minimum temperature of 2000° F can be maintained for at least one second. (See Appendix B)

(4) Appendix B of this Standard shall be used to demonstrate compliance with paragraph (2) and (3) above.

(b) Owners or operators which have an incinerator facility with a continuous capacity greater than 2000 lbs/hr or a batch capacity of less than 16,000 lbs/day in existence on or before May 25, 1990, equipped with a secondary chamber and/or an afterburner operated at a minimum temperature equal to or greater than 1800° F may choose to meet a more restrictive visible emission standard of zero percent opacity in lieu of meeting the residence time requirements in paragraph (a) above. However, a residence time of at least 0.5 seconds will be required if the facility is permitted to burn hazardous waste or antineoplastic drugs.

(c) The firing of the burners and the combustion air shall be modulated automatically to maintain a secondary chamber exit or after burner temperature of at least 1800° F.

(d) The incinerator shall be equipped with an automatic loader except for units with capacities less than or equal to 300 lbs/hr and equipped with the interlocks specified in paragraph (e) or (g) or as provided in paragraph (f). However, a sealed feeding device capable of preventing combustion upsets during charging will be required for the units with capacity less than 300 lbs/hr.

(e) For batch fed incinerators (fully loaded while cold and never opened until burn cycle is completed), interlocks should be provided to prevent (1) ignition of the waste until the secondary chamber exit or afterburner temperature is established at equal to or greater than 1800° F; and (2) recharging until the combustion cycle is complete. No waste shall be incinerated if the required interlock system is not operational.

(f) The owner or operator of an incinerator, except a batch incinerator in existence on or before May 25, 1990, which is manually fed may submit a written request to the Department that manual feeding be allowed. The request must include a plan detailing the methods and operating procedure to be employed in manually charging the incinerator. The Department shall determine if the plan provided is acceptable.

(1) The owner or operator of the incinerator must post or file on the operating premises a copy of the approved plan.

(2) The plan shall not relieve the owner or operator of the duty of meeting all other emission requirements.

(3) Any violation of the conditions under which the plan was approved or any violation of other requirements of this Standard may result in the Department requiring that an automatic mechanical loading device be installed.

(g) For non-batch fed incinerators, the charging of waste to the incinerator shall automatically cease through the use of an interlock system when any of the following conditions exist: [Note: The only monitors required in the interlock system are those required for a specific incinerator size facility in Section V below.]

(1) The incinerator's secondary chamber exit or afterburner temperature drops below 1800° F, and/or

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(2) The carbon monoxide emissions are equal to or greater than 150 ppmv (dry basis), corrected to seven per cent O₂ on a dry basis for a 15 minute period, and/or

(3) The flue gas oxygen level drops below six per cent (dry basis) for a 15 minute period, and/or

(4) The opacity of the visible emissions is equal to or greater than 10% for a period of 15 minutes, and/or

(5) The required monitoring equipment is not functioning.

(h) Startup and Shutdown Requirements

(1) The owner or operator of an affected facility shall ensure that:

(i) No waste is charged to an incinerator other than a batch incinerator until the secondary chamber or afterburner has achieved a minimum temperature of 1800° F.

(ii) The secondary chamber or afterburner has achieved and maintained the required minimum temperature for 15 minutes before charging begins.

(iii) The control equipment (if equipped) is operational and functioning properly, prior to the ignition of waste and until all the waste is incinerated.

(2) The owner or operator of an affected facility shall ensure that during shutdowns the secondary chamber or afterburner minimum temperature of 1800° F is to be maintained using auxiliary burners until “shutdown” as defined in Section II of this standard has been met.

(3) The owner or operator of an affected facility shall ensure that a detailed procedure for normal system startup and shutdown, including the duration of preheat and burn-out cycles, is submitted as part of the application for approval.

(i) Storage.

(1) The owner or operator of an affected facility shall ensure that the storage of hospital/medical/infectious waste shall be in a manner approved by the Department to prevent the escape of malodor.

(2) The owner or operator of an affected facility shall ensure that hospital/medical/infectious waste and ash are stored only in enclosed, leaktight containers or areas.

(3) The owner or operator of an affected facility shall ensure that ash is loaded in an enclosed area or handled wet in enclosed containers.

Section V - Monitoring Requirements.

(a) General.

(1) The owner or operator of an affected facility shall ensure that all monitoring devices are maintained in accordance with Section VI. of this Standard.

(2) The owner or operator of an affected facility shall ensure that all data recorder resolutions are sufficient to display the data recording frequencies required in Table IV, and Section V.(d) of this Standard.

(b) Small (Rural) HMIWI facilities.

(1) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

(2) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

(3) The owner or operator of an affected facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the affected facility is combusting hospital waste and/or medical/infectious waste.

(c) Small (Urban), Medium, and Large HMIWI facilities

(1) The owner or operator of an affected facility shall install, calibrate, maintain, and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table IV of this Standard such that these devices (or methods) measure and record values for these operating parameters at the frequencies indicated in Table IV of this Standard at all times except during periods of startup and shutdown.

(2) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

(3) The owner or operator of an affected facility using something other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under this Standard shall install, calibrate, maintain, and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to Section VII, (c)(8) of this Standard.

(4) The owner or operator of an affected facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter that the affected facility is combusting hospital waste and/or medical/infectious waste.

(5) The owner or operator of an affected facility shall ensure that:

(i) The secondary chamber or afterburner temperatures are continuously monitored and recorded.

(ii) Sensors are installed, maintained, and operated such that the flames from the burners do not impinge upon the sensors.

(iii) The secondary chamber temperature is measured at or beyond the chamber exit.

(6) The Department reserves the right to require the owner/operator to provide telemetering of continuous monitoring data to the Department.

(d) Large HMIWI facilities with capacity equal to or greater than 2,000 lbs/hr

The owner or operator of an affected facility shall ensure that:

(1) continuous monitors are installed on each HMIWI emission stack for O₂, CO, CO₂, and opacity.

(2) the O₂, CO, and CO₂ monitors are co-located upstream of any air pollution control devices unless otherwise approved by the Department.

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(3) each O₂ monitor takes at a minimum of one measurement every 60 seconds and that this data is recorded at least every successive five minutes.

(4) each CO monitor takes a minimum of one measurement every 60 seconds and that this data recorded at least every successive five minutes.

(5) each CO₂ monitor takes a minimum of one measurement every 60 seconds and that this data recorded at least every successive five minutes.

(6) each opacity monitor completes a minimum of one cycle of sampling and analysis for each 10 second period and one cycle of data recording for each successive six minute period.

TABLE IV

OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

Operating parameters to be monitored	Minimum frequency		Control system		
	Data measurement	Data recording	Dry scrubber followed by fabric filter	Wet scrubber	Dry scrubber followed by fabric filter and wet scrubber
Maximum operating parameters:					
Max. charge rate	Continuous	1 time/hour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Max. fabric filter inlet temperature	Continuous	1	<input type="checkbox"/>	<input type="checkbox"/>
Max. flue gas temperature	Continuous	time/minute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minimum operating parameters:					
Min. secondary chamber temperature	Continuous	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Min. dioxins/furans sorbent flow rate	Hourly	time/minute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Min. HCl sorbent flow rate	Hourly	1	<input type="checkbox"/>	<input type="checkbox"/>
Min. mercury (Hg) sorbent flow rate	Hourly	time/minute	<input type="checkbox"/>	<input type="checkbox"/>
Min. pressure drop across the wet scrubber or min. horsepower or amperage to wet scrubber	Continuous	1 time/hour	<input type="checkbox"/>	<input type="checkbox"/>
Min. scrubber liquor flow rate	Continuous	1 time/hour	<input type="checkbox"/>	<input type="checkbox"/>
Min. scrubber liquor pH	Continuous	1 time/minute	<input type="checkbox"/>	<input type="checkbox"/>
		1 time/minute			
		1 time/minute			

= applicable

Section VI - Calibration and Quality Assurance of Monitoring Devices.

(a) Provisions of this section, or other procedures approved by the Department, are applicable to monitoring devices which are required under Section V. or which are required by permit conditions to establish compliance

with R.61-62.5, Standard Number 3.1. The daily zero and span calibration for all categories of continuous emission monitors shall comply with the requirements of 40 CFR 60.13(d)(1) and (d)(2), July 1, 1988.

(b) The owner or operator of an affected facility shall ensure that any monitoring devices required by this Standard, but not included in this section, conform to the manufacturers specifications for initial calibration and quality assurance unless otherwise stated in regulation or permit requirements. Likewise, those monitors specifically mentioned may be subject to other, more stringent, regulatory and permit requirements.

(c) The owner or operator of an affected facility shall ensure that CO, CO₂, O₂, and opacity monitors are recalibrated annually in accordance with paragraph (b) above. Opacity monitors must be audited with low, medium, and high neutral density filters that are National Institute of Science and Technology (NIST) traceable.

Section VII-Testing Requirements.

(a) General

(1) The owner or operator of an affected HMIWI facility constructed on or before June 20, 1996, shall ensure that an initial source test is conducted no later than twelve months following the effective date of this Standard.

(2) For incinerator facilities where construction commenced after June 20, 1996, or modification began after March 16, 1998, the owner or operator shall ensure that an initial source test is conducted within 60 days after achieving the maximum production rate at which the incinerator will be operated, but no later than 180 days after initial start-up.

(3) The owner or operator of an affected facility shall ensure that source testing is conducted in the manner prescribed in Section 60.37e of subpart Ce (40 CFR part 60) and in accordance with Regulation 61-62.1 Section IV, Source Tests. The use of the bypass stack during a performance test shall invalidate the performance test.

(4) The Department may require air contaminant source testing as determined to be necessary to assure continuous compliance with the requirements of this Standard and any emission limit stipulated as a permit condition.

(5) The emission limits under this regulation apply at all times except during periods of startup, shutdown, or malfunction, provided that no hospital waste or medical/infectious waste is charged to the affected facility during startup, shutdown, or malfunction.

(b) Existing Sources

(1) Small (Rural) HMIWI facilities.

(i) The owner or operator of an affected facility shall ensure that an initial source test is conducted for the following:

(A) particulate matter;

(B) CO;

(C) mercury;

(D) dioxins/furans; and

(E) opacity.

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(ii) The Department reserves the right to require the owner or operator to conduct further source tests at any time if it is determined to be necessary by the Department after the initial compliance test. In addition to paragraph (1)(i) above, these tests may include:

- (A) HCl;
- (B) arsenic and compounds expressed as arsenic;
- (C) beryllium and compounds expressed as beryllium;
- (D) cadmium and compounds expressed as cadmium;
- (E) hexavalent chromium and compounds expressed as chromium;
- (F) lead and compounds expressed as lead; and
- (G) nickel and compounds expressed as nickel.

(iii) The owner or operator of an affected facility shall establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits.

(iv) Following the date on which the initial performance test is completed or is required to be completed under this standard, whichever date comes first, the owner or operator of an affected facility shall ensure that the designated facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s).

(v) Except as provided in paragraph (vi) below, operation of the designated facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxins/furans emission limits.

(vi) The owner or operator of an affected facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emission limit(s). The owner or operator of an affected facility shall ensure that repeat performance tests are conducted pursuant to this paragraph using the identical operating parameters that indicated a violation under paragraph (v) above.

(vii) The owner or operator of an affected facility shall demonstrate compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods.

(2) Small (Urban) HMIWI facilities

(i) The owner or operator of an affected facility shall ensure that an initial source test is conducted for the following:

- (A) particulate matter;
- (B) HCl;

- (C) CO;
- (D) cadmium;
- (E) lead;
- (F) mercury;
- (G) dioxins/furans; and
- (H) opacity.

(ii) The Department reserves the right to require the owner or operator to conduct further source tests at any time if it is determined to be necessary by the Department after the initial compliance test. In addition to paragraph (2)(i) above, these tests may include:

- (A) arsenic and compounds expressed as arsenic;
- (B) beryllium and compounds expressed as beryllium;
- (C) hexavalent chromium and compounds expressed as chromium; and
- (D) nickel and compounds expressed as nickel.

(iii) Following the date on which the initial performance test is completed or is required to be completed, whichever date comes first, the owner or operator of an affected facility shall:

(A) Demonstrate compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods.

(B) Demonstrate compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods in accordance with (a)(3) of this section. If all three performance tests over a three-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for the subsequent two years. At a minimum, a performance test for PM, CO, and HCl shall be conducted every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for an additional two years. If any performance test indicates noncompliance with the respective emission limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a three-year period indicate compliance with the emission limit. The use of the bypass stack during a performance test shall invalidate the performance test.

(3) Medium HMIWI facilities

(i) The owner or operator of an affected facility shall ensure that an initial source test is conducted for the following:

- (A) particulate matter;
- (B) HCl;

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- (C) CO;
- (D) cadmium;
- (E) lead;
- (F) mercury;
- (G) dioxins/furans; and
- (H) opacity.

(ii) The Department reserves the right to require the owner or operator to conduct further source tests at any time if it is determined to be necessary by the Department after the initial compliance test. In addition to paragraph (3)(i) above, these tests may include:

- (A) arsenic and compounds expressed as arsenic;
- (B) beryllium and compounds expressed as beryllium;
- (C) hexavalent chromium and compounds expressed as chromium; and
- (D) nickel and compounds expressed as nickel.

(iii) Following the date on which the initial performance test is completed or is required to be completed, whichever date comes first, the owner or operator of an affected facility shall:

(A) Demonstrate compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods.

(B) Demonstrate compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods in accordance with (a)(3) of this section. If all three performance tests over a three-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for the subsequent two years. At a minimum, a performance test for PM, CO, and HCl shall be conducted every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for an additional two years. If any performance test indicates noncompliance with the respective emission limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a three-year period indicate compliance with the emission limit. The use of the bypass stack during a performance test shall invalidate the performance test.

(4) Large HMIWI facilities with capacity < 2000 lbs/hr

(i) The owner or operator of an affected facility shall ensure that an initial source test is conducted for the following:

- (A) particulate matter;
- (B) HCl;
- (C) CO;

- (D) cadmium;
- (E) lead;
- (F) mercury;
- (G) dioxin/furan; and
- (H) opacity.

(ii) The Department reserves the right to require the owner or operator to conduct further source tests at any time if it is determined to be necessary by the Department after the initial compliance test. In addition to paragraph (4)(i) above, these tests may include:

- (A) arsenic and compounds expressed as arsenic;
- (B) beryllium and compounds expressed as beryllium;
- (C) hexavalent chromium and compounds expressed as chromium; and
- (D) nickel and compounds expressed as nickel.

(iii) Following the date on which the initial performance test is completed or is required to be completed, whichever date comes first, the owner or operator of an affected facility shall:

(A) Demonstrate compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods.

(B) Demonstrate compliance with the PM, CO, and HCl emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods in accordance with (a)(3) of this section. If all three performance tests over a three-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for the subsequent two years. At a minimum, a performance test for PM, CO, and HCl shall be conducted every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, or HCl), the owner or operator may forego a performance test for that pollutant for an additional two years. If any performance test indicates noncompliance with the respective emission limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a three-year period indicate compliance with the emission limit. The use of the bypass stack during a performance test shall invalidate the performance test.

(5) Large HMIWI facilities with capacity equal to or greater than 2000 lbs/hr

(i) The owner or operator of an affected facility shall ensure that an initial source test is conducted for the following:

- (A) particulate matter;
- (B) HCl;
- (C) CO;

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- (D) cadmium;
- (E) lead;
- (F) mercury;
- (G) dioxin/furan; and
- (H) opacity.

(ii) The Department reserves the right to require the owner or operator to conduct further source tests at any time if it is determined to be necessary by the Department after the initial compliance test. In addition to paragraph (5)(i) above, these tests may include:

- (A) arsenic and compounds expressed as arsenic;
- (B) beryllium and compounds expressed as beryllium;
- (C) hexavalent chromium and compounds expressed as chromium;
- (D) nickel and compounds expressed as nickel; and
- (E) SO₂.

(iii) Following the date on which the initial performance test is completed or is required to be completed, whichever date comes first, the owner or operator of an affected facility shall:

(A) Demonstrate compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods.

(B) Demonstrate compliance with the PM, CO, HCl, and dioxins/furans emission limits by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures and test methods in accordance with (a)(3) of this section. If all four performance tests over a 3-year period indicate compliance with the emission limit for a pollutant (PM, CO, HCl, or dioxins/furans), the owner or operator may forego a performance test for that pollutant for the subsequent two years. At a minimum, a performance test for PM, CO, HCl, and dioxins/furans shall be conducted every third year (no more than 36 months following the previous performance test). If a performance test conducted every third year indicates compliance with the emission limit for a pollutant (PM, CO, HCl, or dioxins/furans), the owner or operator may forego a performance test for that pollutant for an additional two years. If any performance test indicates noncompliance with the respective emission limit, a performance test for that pollutant shall be conducted annually until all annual performance tests over a three-year period indicate compliance with the emission limit. The use of the bypass stack during a performance test shall invalidate the performance test.

(c) Additional Testing Requirements for New, Existing, and Modified Sources

(1) An owner or operator of a facility using a Continuous Emission Monitoring System (CEMS) to demonstrate compliance with any of the emission limits under Section III. shall:

(i) Determine compliance with the appropriate emission limit(s) using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours (not including startup, shutdown, or malfunction).

(ii) Operate all CEMS in accordance with the applicable procedures under Section V. and 40 CFR Part 60 Appendices B and F.

(2) The owner of an affected facility shall demonstrate to the Department and maintain a combustible carbon content not to exceed six percent (dry basis) in the ash residue (ash and non-combustibles). Such a demonstration shall use the test method outlined in ASTM Method D 3178 "Carbon & Hydrogen Analysis of Coal and Coke," ASTM D 5373, or other methods approved by this Department and be performed at least once per year. The Department reserves the right to require more frequent demonstrations when it is determined to be necessary. The Department also reserves the right to alter the frequency of the required demonstrations as a data base is established and the ash quality consistently shows compliance for a specific facility.

(3) The owner or operator of an affected facility equipped with a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and wet scrubber shall:

(i) Establish the appropriate maximum and minimum operating parameters, indicated in Table IV of this Standard for each control system, as site specific operating parameters during the initial performance test to determine compliance with the emission limits; and

(ii) Following the date on which the initial performance test is completed or is required to be completed under this Standard, whichever date comes first, the owner or operator shall ensure that the affected facility does not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in Table IV of this Standard and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during performance tests. Operation above the established maximum or below the established minimum operating parameter(s) shall constitute a violation of established operating parameter(s).

(4) Except as provided in paragraph (c)(7) of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter:

(i) Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the CO emission limit.

(ii) Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxins/furans sorbent flow rate (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the dioxins/furans emission limit.

(iii) Operation of the affected facility above the maximum charge rate and below the minimum HCl sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit.

(iv) Operation of the affected facility above the maximum charge rate and below the minimum Hg sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit.

(v) Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the PM, dioxins/furans, HCl, Pb, Cd and Hg emission limits.

(5) Except as provided in paragraph (c)(7) of this section, for affected facilities equipped with a wet scrubber:

(i) Operation of the affected facility above the maximum charge rate and below the minimum pressure drop across the wet scrubber or below the minimum horsepower or amperage to the system (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM emission limit.

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(ii) Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the CO emission limit.

(iii) Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum scrubber liquor flow rate (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the dioxins/furans emission limit.

(iv) Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit.

(v) Operation of the affected facility above the maximum flue gas temperature and above the maximum charge rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit.

(vi) Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the PM, dioxins/furans, HCl, Pb, Cd and Hg emission limits.

(6) Except as provided in paragraph (c)(7) of this section, for affected facilities equipped with a dry scrubber followed by a fabric filter and a wet scrubber:

(i) Operation of the affected facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the CO emission limit.

(ii) Operation of the affected facility above the maximum fabric filter inlet temperature, above the maximum charge rate, and below the minimum dioxins/furans sorbent flow rate (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the dioxins/furans emission limit.

(iii) Operation of the affected facility above the maximum charge rate and below the minimum scrubber liquor pH (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the HCl emission limit.

(iv) Operation of the affected facility above the maximum charge rate and below the minimum Hg sorbent flow rate (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the Hg emission limit.

(v) Use of the bypass stack (except during startup, shutdown, or malfunction) shall constitute a violation of the PM, dioxins/furans, HCl, Pb, Cd and Hg emission limits.

(7) The owner or operator of an affected facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted using the identical operating parameters that indicated a violation under paragraph (4), (5) or (6) of this section.

(8) The owner or operator of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under this Standard shall contact the Environmental Protection Agency in writing for approval of other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall not conduct the initial performance test until after the request has been approved by the Environmental Protection Agency.

(9) The owner or operator of an affected facility may conduct a repeat performance test at any time, in accordance with the requirements of R.61-62.1, Section IV, Source Test, to establish new values for the operating parameters. The Department may request a repeat performance test at any time.

Section VIII - Recordkeeping and Reporting Requirements.

(a) The owner or operator of an affected facility shall ensure that:

(1) Inspection and maintenance schedules for incinerators are posted or kept on-site at or near the incinerator.

(2) Operating procedures, start-up procedures, and shutdown procedures for incinerators are approved by the Department and posted on-site at or near the incinerator.

(b) In addition to an inspection and maintenance plan, the owner or operator shall prepare a plan of action for approval by the Department. The plan of action shall identify the steps and procedures the operator will follow to avoid exceedances of the emission limitations and operating conditions specified in this Standard or specific permit conditions. The plan shall include descriptions of start-up and shutdown procedures; actions to be taken to correct anomalous operating conditions and training of plant operators.

(c) The owner or operator of an affected facility shall maintain the following information (as applicable) for a period of at least 5 years:

(1) Calendar date of each record;

(2) Records of the following data:

(i) Concentrations of any pollutant listed in this Standard or measurements of opacity as determined by the continuous emission monitoring system (if applicable);

(ii) HMIWI charge dates, times, and weights and hourly charge rates;

(iii) Fabric filter inlet temperatures during each minute of operation, as applicable;

(iv) Amount and type of dioxins/furans sorbent used during each hour of operation, as applicable;

(v) Amount and type of Hg sorbent used during each hour of operation, as applicable;

(vi) Amount and type of HCl sorbent used during each hour of operation, as applicable;

(vii) Secondary chamber temperatures recorded during each minute of operation;

(viii) Liquor flow rate to the wet scrubber inlet during each minute of operation, as applicable;

(ix) Horsepower or amperage to the wet scrubber during each minute of operation, as applicable;

(x) Pressure drop across the wet scrubber system during each minute of operation, as applicable;

(xi) Temperature at the outlet from the wet scrubber during each minute of operation, as applicable;

(xii) pH at the inlet to the wet scrubber during each minute of operation, as applicable;

(xiii) Records indicating use of the bypass stack, including dates, times, and durations, and

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(xiv) For affected facilities complying with Section VII.(c)(8) and Section V.(c)(3) of this Standard, the owner or operator shall maintain all operating parameter data collected.

(3) Identification of calendar days for which data on emission rates or operating parameters specified under (c)(2) of this section have not been obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken.

(4) Identification of calendar days, times and durations of malfunctions, a description of the malfunction and the corrective action taken.

(5) Identification of calendar days for which data on emission rates or operating parameters specified under (c)(2) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances, and a description of corrective actions taken.

(6) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating parameters, as applicable.

(7) Records showing the names of HMIWI operators who have completed review of the information in Section IX.(h) as required by Section IX.(g) of this Standard, including the date of the initial review and all subsequent annual reviews;

(8) Records showing the names of the HMIWI operators who have completed the operator training requirements, including documentation of training and the dates of the training;

(9) Records showing the names of the HMIWI operators who have met the criteria for qualification under Section IX. of this Standard and the dates of their qualification; and

(10) Records of calibration of any monitoring devices as required under Sections V.(b), (c), and (d) of this Standard.

(d) The owner or operator of an affected facility shall submit the information specified in paragraphs (d)(1) through (d)(3) of this section no later than 30 days following the initial performance test. All reports shall be signed by the facilities manager.

(1) The initial performance test data as recorded under Section VII. of this Standard, as applicable.

(2) The values for the site-specific operating parameters established pursuant to Section VII. of this Standard, as applicable.

(3) The waste management plan as specified in Section X. of this Standard.

(e) The owner or operator of an affected facility shall ensure that an annual report is submitted one year following the submission of the information in paragraph (d) of this section. Subsequent reports shall be submitted no more than 12 months following the previous report (once the unit is subject to permitting requirements under Title V of the Clean Air Act, the owner or operator of an affected facility must submit these reports semiannually). The annual report shall include the information specified in paragraphs (e)(1) through (e)(8) of this section. All reports shall be signed by the facilities manager.

(1) The values for the site-specific operating parameters established pursuant to Section VII. of this Standard, as applicable.

(2) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to Section VII. of this Standard, as applicable.

(3) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable for each operating parameter recorded pursuant to Section VII. of this Standard for the calendar year preceding the year being reported, in order to provide the Department with a summary of the performance of the affected facility over a two-year period.

(4) Any information recorded under paragraphs (c)(3) through (c)(5) of this section for the calendar year being reported.

(5) Any information recorded under paragraphs (c)(3) through (c)(5) of this section for the calendar year preceding the year being reported, in order to provide the Department with a summary of the performance of the affected facility over a two-year period.

(6) If a performance test was conducted during the reporting period, the results of that test.

(7) If no exceedances or malfunctions were reported under paragraphs (c)(3) through (c)(5) of this section for the calendar year being reported, a statement that no exceedances occurred during the reporting period.

(8) Any use of the bypass stack, the duration, reason for malfunction, and corrective action taken.

(f) The owner or operator of an affected facility shall submit semi-annual reports containing any information recorded under paragraphs (c)(3) through (c)(5) of this section no later than 60 days following the reporting period. The first semi-annual reporting period ends six months following the submission of information in paragraph (d) of this section. Subsequent reports shall be submitted no later than six calendar months following the previous report. All reports shall be signed by the facilities manager.

(g) All records specified under paragraph (c) of this section shall be maintained onsite in either paper copy or computer-readable format, unless an alternative format is approved by the Department.

(h) The owner or operator of each small rural HMIWI subject to the emission limits in Table II of this Standard shall:

(1) Maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the time frame established by the Department; and

(2) Submit an annual report containing information recorded under paragraph (h)(1) of this section no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report (once the unit is subject to permitting requirements under Title V of the Act, the owner or operator must submit these reports semiannually). The report shall be signed by the facilities manager.

(i) The owner or operator of an affected facility shall ensure that copies of all records and reports required under this section are available for inspection during normal working hours and copies are furnished within ten working days after receipt of a written request from the Department.

(j) The owner or operator of an affected facility subject to the monitoring provisions of this Standard will be required to report quarterly all exceedances of limits specified in the source's operating permit. All quarterly reports must be postmarked by the 30th day following the end of each calendar quarter.

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(k) The owner or operator of an affected facility shall ensure the appropriate District Environmental Quality Control Office is notified by telephone immediately following any failure of process equipment, failure of any air pollution control equipment, failure of any monitoring equipment, or a process operational error which results in an increase in emissions above any allowable emission rate. In addition, the owner or operator of an affected facility shall ensure that the Department is notified in writing of the problem and measures taken to correct the problem as expeditiously as possible in accordance with South Carolina Air Pollution Control Regulation 61-62.1, Section II.C.

Section IX - Operator Training and Qualification Requirements.

(a) No owner or operator of an affected facility shall allow the affected facility to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

(b) The owner or operator of an affected facility shall ensure that operator training and qualification is obtained through a program approved by the Department and which shall include the requirements contained in paragraphs (c) through (g) of this section.

(c) Training shall be obtained by completing an HMIWI operator training course that includes, at a minimum, the following provisions:

(1) 24 hours of training on the following subjects:

(i) Environmental concerns, including pathogen destruction and types of emissions;

(ii) Basic combustion principles, including products of combustion;

(iii) Operation of the type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

(iv) Combustion controls and monitoring;

(v) Operation of air pollution control equipment and factors affecting performance (if applicable);

(vi) Methods to monitor pollutants (continuous emission monitoring systems and monitoring of HMIWI and air pollution control device operating parameters) and equipment calibration procedures (where applicable);

(vii) Inspection and maintenance of the HMIWI, air pollution control devices, and continuous emission monitoring systems;

(viii) Actions to correct malfunctions or conditions that may lead to malfunction;

(ix) Bottom and fly ash characteristics and handling procedures;

(x) Applicable Federal, State, and Local regulations;

(xi) Work safety procedures;

(xii) Pre-startup inspections; and

(xiii) Recordkeeping requirements.

- (2) An examination designed and administered by the instructor.
- (3) Reference material distributed to the attendees covering the course topics.
- (d) Qualification shall be obtained by:
 - (1) Completion of a training course that satisfies the criteria under paragraph (c) of this section; and
 - (2) Either six months experience as an HMIWI operator, six months experience as a direct supervisor of an HMIWI operator, or completion of at least two burn cycles under the observation of two qualified HMIWI operators.
- (e) Qualification is valid from the date on which the examination is passed or the completion of the required experience, whichever is later.
- (f) To maintain qualification, the trained and qualified HMIWI operator shall complete and pass an annual review or refresher course of at least four hours covering, at a minimum, the following:
 - (1) Update of regulations;
 - (2) Incinerator operation, including startup and shutdown procedures;
 - (3) Inspection and maintenance;
 - (4) Responses to malfunctions or conditions that may lead to malfunction; and
 - (5) Discussion of operating problems encountered by attendees.
- (g) A lapsed qualification shall be renewed by one of the following methods:
 - (1) For a lapse of less than three years, the HMIWI operator shall complete and pass a standard annual refresher course described in paragraph (f) of this section.
 - (2) For a lapse of three years or more, the HMIWI operator shall complete and pass a training course with the minimum criteria described in paragraph (c) of this section.
- (h) The owner or operator of an affected facility shall maintain documentation at the facility that address the following:
 - (1) Summary of the applicable requirements under this Standard;
 - (2) Description of basic combustion theory applicable to an HMIWI;
 - (3) Procedures for receiving, handling, and charging waste;
 - (4) HMIWI startup, shutdown, and malfunction procedures;
 - (5) Procedures for maintaining proper combustion air supply levels;
 - (6) Procedures for operating the HMIWI and associated air pollution control systems within the requirements established under this Standard;
 - (7) Procedures for responding to periodic malfunction or conditions that may lead to malfunction;

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- (8) Procedures for monitoring HMIWI emissions;
 - (9) Reporting and Record keeping procedures; and
 - (10) Procedures for handling ash.
- (i) The owner or operator of an affected facility shall establish a program for reviewing the information listed in paragraph (h) of this section annually with each HMIWI operator.
- (1) The initial review of the information listed in paragraph (h) of this section shall be conducted within six months after the effective date of this subpart or prior to assumption of responsibilities affecting HMIWI operation, whichever date is later.
 - (2) Subsequent reviews of the information listed in paragraph (h) of this section shall be conducted annually.
- (j) The information listed in paragraph (h) of this section shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by the Department.

Section X-Waste Management Plan.

The owner or operator of an affected facility shall prepare a waste management plan. The waste management plan shall identify both the feasibility and the approach to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. A waste management plan may include, but is not limited to, elements such as paper, cardboard, plastics, glass, battery, or metal recycling; or purchasing recycled or recyclable products. A waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. It should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emission reductions expected to be achieved, and any other environmental or energy impacts they might have. The American Hospital Association publication entitled "An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities" (incorporated by reference, see 40 CFR Part 60.17, September 15, 1997), shall be considered in the development of the waste management plan.

Section XI -Inspection Guidelines.

- (a) The owner or operator of an affected facility shall ensure that the HMIWI has an initial equipment inspection performed within one year of the effective date of this Standard. The inspection shall not relieve the owner or operator from any detected violations.
- (1) At a minimum, an inspection shall include the following:
 - (i) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation; clean pilot flame sensor, as necessary;
 - (ii) Ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;
 - (iii) Inspect hinges and door latches and lubricate as necessary;
 - (iv) Inspect dampers, fans, and blowers for proper operation;
 - (v) Inspect HMIWI door and door gaskets for proper sealing;

- (vi) Inspect motors for proper operation;
- (vii) Inspect primary chamber refractory lining; clean and repair/replace lining as necessary;
- (viii) Inspect incinerator shell for corrosion and/or hot spots;
- (ix) Inspect secondary/tertiary chamber and stack, clean as necessary;
- (x) Inspect mechanical loader, including limit switches, for proper operation, if applicable;
- (xi) Visually inspect waste bed (grates), and repair/seal, as appropriate;
- (xii) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;
- (xiii) Inspect air pollution control device(s) for proper operation, if applicable;
- (xiv) Inspect waste heat boiler systems to ensure proper operation, if applicable;
- (xv) Inspect bypass stack components;
- (xvi) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and
- (xvii) Generally observe that the equipment is maintained in good operating condition.

(2) Within 10 operating days following an equipment inspection the owner or operator of an affected facility shall ensure that all necessary repairs shall be completed. In order to exceed the 10 days, the owner or operator must justify the extension and obtain written approval from the Department establishing a date whereby all necessary repairs of the designated facility shall be completed.

(b) The owner or operator of an affected facility shall ensure that the HMIWI has an equipment inspection performed annually (no more than 12 months following the previous annual equipment inspection), as outlined in paragraphs (a)(1) and (a)(2) of this section.

APPENDIX A

Toxic Equivalency Factors

dioxins/furans congener	Toxic Equivalency Factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01

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Octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.001

APPENDIX B

RESIDENCE TIME CALCULATION GUIDANCE

The review of all incinerators shall include verification of the residence time stated on the application. This guidance shall be followed to assure that these calculations are handled in a uniform manner.

STEP 1. Estimate the total heat input to the system:

Total system heat input (BTU/hr) = [Maximum waste firing rate (lbs/hr) x Maximum heating value (BTU/lb)] + Average primary burner heat input + Average secondary burner input.

NOTE: Use the average burner inputs required after the onset of waste burning.

Use a waste heating value of 8,500 BTU/lb.

STEP 2. Estimate the system heat loss (prior to heat recovery):

System heat loss = Shell loss + sensible heat in ash + sensible heat in unburned carbon + latent heat.

The heat loss may be assumed to be 20% of total heat input.

STEP 3. Calculate the net heat available (Q) to raise the temperature of the products of combustion:

Q (BTU/hr) = (Total system heat input) - (system heat loss).

STEP 4. Calculate the weight of product of combustion (M)

$$M = Q / \{C_p \times (T_o - T_i)\}$$

C_p = average specific heat (BTU/lb F), assume a value of 0.28

T_o = exit temperature (°F), use the design temperature of 2000° F as T_o .

T_i = ambient air temperature (°F), assume the ambient temperature to be 70° F.

STEP 5. Calculate the volume of product of combustion (F):

$$F \text{ (scfs)} = \frac{M}{d \times 60 \times 60}$$

d (lb/cu. ft.) = density of exhaust gases at 70° F, use a value of 0.075.

$$F^l \text{ (acfs)} = F \times \frac{(T_o + 460)}{530}$$

$$F^l \text{ design temperature} = F \times \frac{2460}{530}$$

STEP 6. Calculate the volume of secondary chamber.

STEP 7. Residence time = $\frac{\text{chamber volume}}{F^l}$

For a minimum 1 sec secondary chamber residence time and design temperature 2000° F,

$$\frac{\text{secondary chamber volume}}{F^l} = > 1$$

Amend R.61-62.1, Definitions and General Requirements, at Section I. Definitions, by adding 12 new definitions in alphanumeric order to read:

Biologicals - preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

Blood Products - any product derived from human blood, including but not limited to blood plasma, platelet, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

Body Fluids- liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

Bypass stack - a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Continuous emission monitoring system or CEMS - a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

Dioxins/furans - the combined emissions of tetra- through octa-chlorinated dibenzo-paradioxins and dibenzofurans, as measured by EPA Reference Method 23.

Hospital - any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

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Hospital/medical/infectious waste incinerator or HMIWI or HMIWI unit - any device that combusts any amount of hospital waste and/or medical/infectious waste.

Hospital waste - discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

Malfunction - any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator shall operate within established parameters as much as possible, and monitoring of all applicable operating parameters shall continue until all waste has been combusted or until the malfunction ceases, whichever comes first.

Medical/infectious waste - any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals listed below, and any waste defined as infectious waste in R.61-105, *Infectious Waste Management*. The definition of medical/infectious waste does not include hazardous waste identified or listed in R.61-79.261, *Hazardous Waste Management*; household waste, as defined in R.61-79.261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in R.61-79.261.4(a)(1).

a. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

b. Human pathological waste - tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

c. Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

d. Sharps-instruments used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

e. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

f. Isolation wastes- biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

g. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

Pathological waste - waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Amend R.61-62.1, Definitions and General Requirements, at Section I. Definitions, by deleting the following definitions:

35. Infectious waste- any solid or liquid wastes which contain or are believed to contain pathogens with sufficient virulence and quantity that significant exposure to the waste by a susceptible host could result in an infectious disease or its infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating or reversible illness; and/or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Infectious wastes include, but are not limited to, the following:

a. Sharps - Any discarded article that may cause puncture or cuts, including but not limited to: needles, syringes, pasteur pipettes, lancets, broken glass, and scalpel blades used in patient care or in medical, research, or industrial laboratories.

b. Microbiologicals (Cultures and Stocks of Infectious Agents and Associated Biologicals) - Specimen cultures from medical and pathological laboratories; including but not limited to: cultures and stocks of infectious agents from research, clinical, and industrial laboratories; wastes from the production of biologicals, and discarded live and attenuated vaccines; and culture dishes/devices used to transfer, inoculate, and mix cultures.

c. Blood/Blood Products and Body Fluids to which Universal Precautions apply - All waste bulk unabsorbed human blood, blood products (i.e., serum, plasma and other blood components) and visibly bloody body fluids such as suctioned fluids, excretion, and secretions. Body fluids to which Universal Precautions apply are cerebrospinal fluids, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, semen, and vaginal secretions. (MMWR, June 24, 1988/Vol. 37/No. 24)

d. Pathological Wastes - Including but not limited to fetuses, tissues, organs, limbs, and other body parts removed during surgery or autopsy, and excluding tissue treated or preserved with formaldehyde or other preserving agents.

e. Contaminated Animal Carcasses, Body Parts and Bedding - Exposed to pathogens in research or in the production of biologicals or in vivo testing of pharmaceuticals.

f. Isolation Waste from Communicable Disease - Wastes contaminated with known or potentially infectious materials from patients with diseases considered communicable and requiring isolation regardless of the health care delivery site, i.e. patient's room, surgery, dialysis or other site.

g. Miscellaneous Contaminated Wastes:

i. Other materials which are designated by written facility policy as infectious. This determination is to be made by the designated responsible person(s) of the facility based on the belief that the waste presents a significant danger of infection.

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ii. Other materials which are designated by written DHEC policy as requiring special handling, or as a potential public health threat. (This may include specific materials, equipment and other items contaminated with infectious/potentially infectious agents.)

39. Medical Waste—Wastes generated in any hospital or any health care facility or any pathological wastes (except for human and animal remains burned in a crematory incinerator), chemotherapeutic wastes or infectious wastes generated in any facility except private residences.

40. Medical Waste Incinerator—An incinerator designed and operated to burn medical waste.

41. Medical Waste Incinerator Facility—Any combination of medical waste incinerators located on one or more contiguous or adjacent properties and which is owned or operated by the same person or by persons under common control.

Fiscal Impact Statement: There will be no increased costs to the State or its political subdivisions as a result of these amendments.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-62.5, Standard Number 3.1, *Medical Waste Incineration*; and R.61-62.1, *Definitions and General Requirements*.

Purpose: The purpose of this action is to amend Regulation 61-62.5, Standard Number 3.1, *Medical Waste Incineration*, for compliance with the Federal mandate to adopt regulations and guidelines at least as stringent as the Federal rule promulgated on September 15, 1997 [60 FR 48350]. In addition, the Department will propose amendments to some of the existing provisions of the State Medical Waste Incineration Regulation which are not Federally mandated. The more stringent provisions are found in R.61-62.5, Standard Number 3.1 at Section VII.(b)(5)(iii)(B) and Section XI.(b). The regulation title will also be changed from *Medical Waste Incineration* to *Hospital/Medical/Infectious Waste Incinerators*. Finally, revisions will be made to the definition section of R.61-62.1, *Definitions and General Requirements*.

Legal Authority: The legal authority for the R.61-62 is Section 48-1-30 through 48-1-60, S.C. Code of Laws.

Plan for Implementation: These amendments will take effect upon approval by the South Carolina General Assembly and publication in the *State Register*. The amendments will be implemented by providing the regulated community with copies of the regulation.

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

Title III of the Clean Air Act (CAA) Amendment of 1990 specifically enumerated 188 hazardous air pollutants (HAP) and instructed EPA and the States to protect public health by reducing emissions of these pollutants from the sources that release them. The EPA's standards are designed to bring all sources up to the level of emissions control achieved by those that are already well controlled. The CAA also requires that each State submit a State plan to EPA within one year of EPA's adoption of the Hospital/Medical/Infectious Waste Incineration guidelines. South Carolina has an existing Medical Waste Regulation that will be revised to incorporate the Federal regulation. In addition, the Department proposes to add two items to the regulation which are more stringent than the Federal rule. The two more stringent items are:

Section VII.(b)(5)(iii)(B). The Federal rule requires large HMIWI facilities to test for several pollutants for three consecutive years. If the test results indicate compliance with the emission limits for the particular pollutant, then the testing shall be conducted every three years. The Department added dioxins/furans to the list of pollutants to be tested and thus the State standard is more stringent than the Federal requirements. The Department believes the addition of dioxins/furans to this list is reasonable given the fact that dioxins/furans testing was already required at four-year intervals by the existing State standards. This change also makes the testing requirements consistent for all pollutants, thereby lessening the confusion surrounding different testing dates. In addition, the provision helps to further protect the public from the potential health dangers posed by dioxins/furans.

Section XI. Inspection Guidelines. The Federal rule requires small rural facilities to conduct annual inspections. The Department extended these provisions to apply to any size incinerator. The extension of these provisions to any size incinerator makes the State rule more stringent than the Federal requirements. The Department believes an annual inspection reflects good engineering practices and can benefit both the public and the facility particularly if an inspection reveals a problem that may otherwise go unnoticed.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased costs to the State or its political subdivisions as a result of these amendments. According to information contained in the Federal Register on September 15, 1997 [60 FR 48348], the EPA estimates that the total nationwide cost to the regulated community ranges from \$71 million to \$210 million per year depending on which alternative waste disposal option is selected.

As mentioned above, two new provisions have been added to the regulations making them more stringent than the Federal requirements. These two added provisions are the dioxins/furans testing and the extension of the annual inspection requirements to all facilities.

The Department estimates that the additional testing for dioxins/furans will range from \$8,000 to \$10,000 per test. This requirement will currently apply to only one facility. The Department believes that increasing the frequency of the testing provisions for dioxins/furans will protect the public health.

The Department estimates that the annual inspection requirement would take most of the affected facilities only a day or two to complete. Estimates indicate that such an inspection would cost approximately \$600 per day. As previously stated, the Department believes an annual inspection reflects good engineering practices and can benefit both the public and the facility particularly if an inspection reveals a problem that may otherwise go unnoticed.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Section 129 of the Clean Air Act directs EPA to apply controls to various categories of solid waste incinerators, including hospital/medical/infectious waste incinerator(s) (HMIWI). Standards and guidelines are set forth as emission limits and will significantly reduce HMIWI emissions. Current methods of medical waste incineration cause the release of a wide array of air pollutants, including several pollutants of particular public health concern. Emissions from HMIWI contain organics (dioxins/furans), particulates (PM), metals (Cd, Pb, and Hg), and acid gases (HCl and SO₂, and NO_x). These pollutants can have adverse effects on both public health and welfare. Pollutants of principal concern to public health include dioxins/furans, PM, Pb, Cd, and Hg.

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

If a State does not adopt regulations and guidelines and submit a State plan, the EPA will adopt and implement a Federal plan to regulate existing hospital/medical/infectious waste incinerators in South Carolina. A Federal plan would not be tailored to the specific needs of South Carolina.

Document No. 2519
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 13-7-40, as amended

R.61-63. Radioactive Materials (Title A)

Synopsis:

The Nuclear Regulatory Commission continually updates regulations, and state regulations are amended regularly to incorporate federal updates. Section 274 of the Atomic Energy Act of 1954, as amended, requires states to adopt federal regulations and updates for compatibility. The Department has adopted sections on deliberate misconduct, exemption for Carbon-14 urea for "in vivo" diagnostic use, reciprocal recognition of Agreement State licenses, criteria for the release of individuals administered radioactive material, and requirements for industrial radiography operations. These regulations comply with Title 10 CFR Parts 20 (May 29, 1997), 30 (February 27, 1997, January 2, 1998 and February 12, 1998), 34 (June 27, 1997), and 35 (May 29, 1997).

The revision was promulgated to comply with federal law; neither a fiscal impact statement nor preliminary assessment report is required. See discussion of revisions below and a statement of need and reasonableness provided herein.

Discussion of Revisions

(1) Added section to describe a Deliberate Misconduct rule.

<u>SECTION</u>	<u>REVISION</u>
61-63.2.1.2	Describes what actions may be interpreted as deliberate misconduct and addresses possible enforcement action.

(2) A new section that exempts capsules containing Carbon-14 urea for "in vivo" diagnostic use for humans.

<u>SECTION</u>	<u>REVISION</u>
61-63.2.20.2.7	Adds new section to permit any person to receive, possess, use, transfer, own or acquire for "in vivo" diagnostic use, capsules containing one microcurie of C-14 urea without a license.

(3) Gives reference to the recognition of Agreement State Licenses in areas under exclusive Federal jurisdiction within an Agreement State.

<u>SECTION</u>	<u>REVISION</u>
61-63.2.21.1	Clarifies the locations in which reciprocal recognition of licenses is granted.

- 61-63.2.21.1.2 Revises this section to omit a waiver regarding filing of written notifications.
- 61-63.2.21.1.5 Revises section to designate areas for reciprocal recognition regarding possession of radioactive material.
- 61-63.2.21.1.6 Adds section to address reciprocal licensure in offshore waters.
- (4) Revises dose limits to exclude doses due to exposure of patients to radiation for medical purposes and due to exposure from individuals administered radioactive material and released in accordance with RHA 4.8.12.

SECTION REVISION

- 61-63.3.1 Revises dose limits to exclude doses due to exposure of patients to radiation for medical purposes and due to exposure from individuals administered radioactive material and released in accordance with RHA 4.8.12.
- 61-63.3.2.48 Revises definition to exclude doses received from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12.
- 61-63.3.2.52 Revises definition to exclude doses received from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12.
- 61-63.3.13.1.1 and .3.13.1.2 Revises section to exclude doses from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12.

- (5) Changes posting requirements in hospitals due to revised patient release criteria.

SECTION REVISION

- 61-63.3.23.2 Section revised to use the term “licensee control” rather than “confinement” because the latter term no longer applies to RHA 4.8.12.
- 61-63.3.23.2.1 and 3.23.2.2 Sections deleted because these paragraphs no longer apply to the posting of patients’ rooms.

- (6) New section added to change patient release criteria following medical administration of radioactive material.

SECTION REVISION

- 61-63.4.8.12 through 4.8.12.5 Revises section to change patient release criteria to a dose limit of 0.5 rem total effective dose equivalent to an individual from exposure to a released patient.
- 61-63.4.11.3.1.6 and 4.13.3.1.5 Sections deleted and placed in reserved status because these paragraphs are redundant now that RHA 4.8.12 has requirements for instructions for released patients.
- 61-63.4.13.3.1 Revised section to reference revised release criteria.
- 61-63.4.13.3.1.1 Section revised to delete inapplicable text due to revised release criteria for patients.

- (7) Revisions outlining current requirements for Industrial Radiography Operations.

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<u>SECTION</u>	<u>REVISION</u>
61-63.5.1	Revised to clarify purpose for Part V regulations.
61-63.5.3	Revision of definitions.
61-63.5.4.2 through 5.4.11	Deletion of existing training program requirements and replacement with new procedures for verification of training program.
61-63.5.5	Revision of limits on external radiation levels from storage containers and source changers.
61-63.5.6	Revision of miscellaneous locking requirements for radiography equipment.
61-63.5.7	Revision of labeling, storage and transportation requirements.
61-63.5.8	Revision of radiation survey instrument requirements.
61-63.5.9	Modification to include requirements for leak testing depleted uranium.
61-63.5.10	Section revised to specify content of inventory records.
61-63.5.11	Revision of requirements for maintaining utilization logs.
61-63.5.12	Training requirements revised and expanded for radiographer and radiographer's assistant.
61-63.5.13	Operating and emergency procedures revised to include additional instructions.
61-63.5.14	Personnel monitoring requirements revised to include wearing of electronic personal dosimeters and to specify exchange frequencies.
61-63.5.15	Section revised regarding surveillance of a radiographic operation at permanent radiographic installations.
61-63.5.17	Revision to survey requirement following each radiographic exposure.
61-63.5.19	Revision to require written procedures and records for inspection and maintenance of radiographic equipment.
61-63.5.20	Revision to regulation governing entrance to a permanent radiographic installation.
61-63.5.21	Section replaced with regulation outlining requirements for radiography performed at locations other than permanent radiographic installations.
61-63.5.22	Section replaced with training requirements for a Radiation Safety Officer.
61-63.5.23	Section added to specify form of records.
61-63.5.24	Section added to specify location of documents and records.
61-63.5.25	Section renumbered - No changes to content.
61-63.5.26	Section added to specify requirements of certification programs for radiographers.

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

Text of Amendment to Regulation 61-63:

Replace R.61-63.2.1 and add 61-63.2.1.2 through 61-63.2.1.2.3.2 to read:

RHA 2.1 PURPOSE AND SCOPE

2.1.1 No person shall receive, use, possess, transfer, or dispose of radioactive material except as authorized in a specific or general license issued pursuant to these regulations, or as otherwise provided in these regulations.

NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material, intended for use by the general public may be obtained only from the United States Nuclear Regulatory Commission, Washington, D.C. 20555.

2.1.2 Deliberate misconduct

2.1.2.1 Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

2.1.2.1.1 Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Department; or

2.1.2.1.2 Deliberately submit to the Department, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Department.

2.1.2.2 A person who violates RHA 2.1.2.1.1 or 2.1.2.1.2 of this section may be subject to enforcement action in accordance with the procedures in RHA 1.12.

2.1.2.3 For the purposes of RHA 2.1.2.1.1, deliberate misconduct by a person means an intentional act or omission that the person knows:

2.1.2.3.1 Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Department; or

2.1.2.3.2 constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

R.61-63 2.20.2.7 is added to read:

2.20.2.7 Radioactive drug: Capsules containing Carbon-14 urea for "in vivo" diagnostic use for humans.

2.20.2.7.1 Except as provided in 2.20.2.7.2 and 2.20.2.7.3, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns or acquires capsules containing $1\mu\text{Ci}$ (37kBq) Carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

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2.20.2.7.2 Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Part IV of these regulations.

2.20.2.7.3 Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to RHA 2.7.5.

2.20.2.7.4 Nothing in this section relieves persons from complying with applicable FDA, Federal, and other State requirements governing receipt, administration, and use of drugs.

R.61-63.2.21.1 is revised to read:

2.21.1 Subject to these regulations, any person who holds a specific license from the U.S. Nuclear Regulatory Commission, any Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within the State of South Carolina for a period not in excess of 180 days in any calendar year provided that:

R.61-63.2.21.1.2 is revised to read:

2.21.1.2 The out-of-state licensee notifies the Department in writing at least three (3) days prior to engaging in such activity. Such notification shall indicate the location, period, and type of proposed possession and use within the State, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, he may, upon application to the Department, obtain permission to proceed sooner; and

R.61-63.2.21.1.5 is revised to read:

2.21.1.5 The out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in this section except by transfer to a person (i) specifically licensed by the Department or by the U.S. Nuclear Regulatory Commission to receive such material, or (ii) exempt from the requirements for a license for such material under paragraph 2.20.2.1.

R.61-63.2.21.1.6 is added:

2.21.1.6 The general license granted in RHA 2.21.1 concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time.

R.61-63.3.1 is revised to read:

RHA 3.1 PURPOSE AND SCOPE

The regulations in this part establish standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the Department and apply to all licensees and registrants.

It is the purpose of the regulations in this part to control the receipt, possession, use, transfer, and disposal of licensed material by any licensee in such a manner that the total dose to an individual (including doses resulting from licensed and unlicensed radioactive material and from radiation sources other than background radiation) does not exceed the standards for protection against radiation prescribed in the regulations in this part. However, nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.

The regulations in this part apply to persons licensed by the Department to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with RHA 4.8.12, or to exposure from voluntary participation in medical research programs.

R.61-63.3.2.48 is revised to read:

3.2.48 “Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to radiation and/or radioactive material from licensed and unlicensed sources of radiation whether in the possession of the licensee or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12, or from voluntary participation in medical research programs, or as a member of the public.

R.61-63.3.2.52 is revised to read:

3.2.52 “Public dose” means the dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual had received, from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12, or from voluntary participation in medical research programs.

R.61-63.3.13: 61-63.3.13.1.1 through 61-63.3.13.1.2 is revised to read:

3.13.1.1 The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from background radiation, any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with RHA 4.8.12, voluntary participation in medical research programs, and the licensee’s disposal of radioactive material into sanitary sewerage in accordance with RHA 3.29, and

3.13.1.2 The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with RHA 4.8.12, does not exceed 0.002 rem (0.02 mSv) in any one hour.

R.61-63.3.23.2 is revised; R.61.3.23.2.1 and R.61-63.3.23.2.2 are deleted, to read:

3.23.2 Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to RHA 3.22 provided that the patient could be released from licensee control pursuant to RHA 4.8.12.

R.61-63.4.8.12 through 4.8.12.5 is revised to read:

4.8.12 Release of Individuals Containing Radiopharmaceuticals or Permanent Implants.

4.8.12.1 The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 500 millirem (5 millisieverts). The total effective dose equivalent to a minor, pregnant female, or a potentially pregnant female may not exceed 100 millirem (1 millisievert).¹

4.8.12.2 The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if

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the total effective dose equivalent to any other individual is likely to exceed 100 millirem (1 millisievert). If a breast-feeding infant or child could receive a radiation dose assuming there were no interruption of breast-feeding, the instructions shall also include:

4.8.12.2.1 Guidance on the interruption or discontinuation of breast-feeding and

4.8.12.2.2 Information on the consequences of failure to follow the guidance.

4.8.12.3 The licensee shall maintain a record of the basis for authorizing the release of an individual, for 3 years after the date of release, if the total effective dose equivalent is calculated by:

4.8.12.3.1 Using the retained activity rather than the activity administered,

4.8.12.3.2 Using an occupancy factor less than 0.25 at 1 meter,

4.8.12.3.3 Using the biological or effective half-life, or

4.8.12.3.4 Considering the shielding by tissue.

4.8.12.4 The licensee shall maintain a record, for 3 years after the date of release, that instructions were provided to a breast-feeding woman if a radiation dose to an infant or child resulted from continued breast-feeding.

4.8.12.5 The licensee shall provide the released individual with written instructions on actions recommended to prevent the release of contaminated waste to the municipal waste stream.

R.61-63.4.8.12 footnote is added to read:

¹Regulatory Guide, "Release of Patients Administered Radioactive Materials," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 500 millirem (5 millisieverts).

R.61-63.4.11.3.1.6 text is deleted in its entirety and section placed in a reserved status:

4.11.3.1.6 (Reserved)

R.61-63.4.13.3.1 through 4.13.3.1.1 is revised to read:

4.13.3.1 For each patient or human research subject receiving implant therapy and not released from licensee control pursuant to RHA 4.8.12, a licensee shall:

4.13.3.1.1 Not place the patient or the human research subject in the same room with an individual who is not receiving radiation therapy.

R.61-63.4.13.3.1.5 text is deleted in its entirety and section placed in a reserved status:

4.13.3.1.5 (Reserved)

R.61-63.5.1 is revised to read:

RHA 5.1 PURPOSE

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing radioactive material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of these

regulations. In particular, the requirements and provisions of Parts I, II, III, and VI of these regulations apply to applications and licenses subject to this part.

R.61-63.5.3 is revised to read:

RHA 5.3 DEFINITIONS as used in this Part:

5.3.1 *ALARA* (acronym for “as low as is reasonably achievable”) means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in Part III, Title A as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

5.3.2 *Annual refresher safety training* means a review conducted or provided by the licensee for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions.

5.3.3 *Associated equipments* means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop , exposure head. □J□ t

5.3.4 *Becquerel (Bq)* means one disintegration per second.

5.3.5 *Certifying Entity* means an independent certifying organization meeting the requirements in Appendix A, 10 CFR Part 34 or an Agreement State meeting the requirements in appendix A, Parts II and III of 10 CFR Part 34.

5.3.6 *Collimator* means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

5.3.7 *Control (drive) cable* means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

5.3.8 *Control drive mechanism* means a device that enables the source assembly to be moved to and from the exposure device.

5.3.9 *Control tube* means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

5.3.10 *Exposure head* means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

5.3.11 *Field station* means a facility where licensed material may be stored or used and from which equipment is dispatched.

5.3.12 *Gray* means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads.

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5.3.13 *Guide tube (Projection sheath)* means a flexible or rigid tube (i.e., □J□tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

5.3.14 *Hands-on experience* means experience in all of those areas considered to be directly involved in the radiography process.

5.3.15 *Independent certifying organization* means an independent organization that meets all of the criteria of Appendix A, 10 CFR Part 34.

5.3.16 *Industrial radiography (radiography)* means an examination of the structure of materials by nondestructive methods, utilizing ionizing radiation to make radiographic images.

5.3.17 *Lay-barge radiography* means industrial radiography performed on any water vessel used for laying pipe.

5.3.18 *Offshore platform radiography* means industrial radiography conducted from a platform over a body of water.

5.3.19 *Permanent radiographic installation* means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

5.3.20 *Practical Examination* means a demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures.

5.3.21 *Radiation Safety Officer for industrial radiography* means an individual with the responsibility for the overall radiation safety program on behalf of the licensee and who meets the requirements of RHA 5.22.

5.3.22 *Radiographer* means any individual who performs or who, in attendance at the site where the sealed source or sources are being used, personally supervises industrial radiographic operations and who is responsible to the licensee for assuring compliance with the requirements of the Department's regulations and the conditions of the license.

5.3.23 *Radiographer certification* means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing and experience criteria.

5.3.24 *Radiographer's assistant* means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in industrial radiography.

5.3.25 *Radiographic exposure device* (also called a camera, or a projector) means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

5.3.26 *Radiographic operations* means all activities associated with the presence of radioactive sources in a radiographic exposure device during use of the device or transport (except when being transported by a common or contract transport), to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

5.3.27 *S-tube* means a tube through which the radioactive source travels when inside a radiographic exposure device.

5.3.28 *Sealed source* means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

5.3.29 *Shielded position* means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

5.3.30 *Sievert* means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

5.3.31 *Source assembly* means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

5.3.32 *Source changer* means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

5.3.33 *Storage area* means any location, facility, or vehicle which is used to store or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

5.3.34 *Storage container* means a container in which sealed sources are secured and stored.

5.3.35 *Temporary jobsite* means a location where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license.

5.3.36 *Underwater radiography* means industrial radiography performed when the radiographic exposure device and/or related equipment are beneath the surface of the water.

R.61-63.5.4 through R.61-63.5.4.11 is revised to read:

RHA 5.4 ISSUANCE OF SPECIFIC LICENSES FOR USE OF SEALED SOURCES IN RADIOGRAPHY

An application for a specific license for use of sealed sources in industrial radiography will be approved if:

5.4.1 The applicant satisfies the general requirements specified in RHA 2.6 of these regulations.

5.4.2 The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of RHA 5.12.

5.4.3 The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

5.4.4 The applicant submits written operating and emergency procedures as described in RHA 5.13.

5.4.5 The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant at intervals not to exceed 6 months as described in RHA 5.12.5.

5.4.6 The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

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5.4.7 The applicant identifies and lists the qualifications of the individual(s) designated as the RSO (RHA 5.22) and potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures.

5.4.8 If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the following:

5.4.8.1 Instruments to be used;

5.4.8.2 Methods of performing the analysis; and

5.4.8.3 Pertinent experience of the person who will analyze the wipe samples.

5.4.9 If the applicant intends to perform "in-house" calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in RHA 5.8.

5.4.10 The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

5.4.11 The applicant identifies the locations where all records required by this part and other parts of this regulation will be maintained.

R.61-63.5.5 is revised to read:

RHA 5.5 Limits on external radiation levels from storage containers and source changers.

The maximum exposure rate limits for storage containers and source changers are 200 millirem (2 millisieverts) per hour at any exterior surface, and 10 millirem (0.1 millisieverts) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

R.61-63.5.6 is revised to read:

RHA 5.6 PERFORMANCE AND LOCKING REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT

Equipment used in industrial radiographic operations must meet the following minimum criteria:

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 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). This publication may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018; 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 Office of the Federal Register, 800 North Capitol Street N.W., Suite 700, Washington, DC 20408.

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.

5.6.2 In addition to the requirements specified in RHA 5.6.1, the following requirements apply to radiographic exposure devices, source changers, source assemblies and sealed sources.

5.6.2.1 Each radiographic exposure device must have attached to it by the user, a durable, legible, clearly visible label bearing the:

- (I) Chemical symbol and mass number of the radionuclide in the device;
- (ii) Activity and the date on which this activity was last measured;
- (iii) Model number and serial number of the sealed source;
- (iv) Manufacturer of the sealed source; and
- (v) Licensee's name, address, and telephone number

5.6.2.2 Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR Part 71.

5.6.2.3 Modification of radiographic exposure devices, source changers, and source assemblies and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

5.6.3 In addition to the requirements specified in RHA 5.6.1 and RHA 5.6.2, the following requirements apply to radiographic exposure devices, source assemblies and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers.

5.6.3.1 The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

5.6.3.2 The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

5.6.3.3 The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

5.6.3.4 Each sealed source or source assembly must have attached to it or engraved in it, a durable, legible, visible label with the words: "**Danger-Radioactive.**" The label must not interfere with the safe operations of the exposure device or associated equipment.

5.6.3.5 The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

5.6.3.6 Guide tubes must be used when moving the source out of the device.

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5.6.3.7 An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during industrial radiographic operations.

5.6.3.8 The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980.

5.6.3.9 Source changers must provide a system for assuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

5.6.4 All radiographic exposure devices and associated equipment in use after January 10, 1996, must comply with the requirements of the above sections.

5.6.5 Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times) when not under the direct surveillance of a radiographer or a radiographer's assistant except at permanent radiographic installations as stated in RHA 5.15. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

5.6.6 Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

5.6.7 Notwithstanding RHA 5.6.1 of this section, equipment used in industrial radiographic operations need not comply with section 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.

R.61-63.5.7 is revised to read:

RHA 5.7 LABELING, STORAGE, AND TRANSPORTATION.

5.7.1 The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, i.e., magenta, purple or black on a yellow background, having a minimum diameter of 25 mm, and the wording

CAUTION*

RADIOACTIVE MATERIAL

NOTIFY CIVIL AUTHORITIES (or NAME OF COMPANY)

* _____ or DANGER

5.7.2 The licensee may not transport licensed material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR part 71.

5.7.3 Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

5.7.4 The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss tampering, or unauthorized removal of the licensed material from the vehicle.

R.61-63.5.8 is revised to read:

RHA 5.8 RADIATION SURVEY INSTRUMENTS

5.8.1 The licensee shall keep sufficient calibrated and operable radiation survey instruments at each location where radioactive material is present to make the radiation surveys required by this part and by Part III. Instrumentation required by this section must be capable of measuring a range from 2 millirems (0.02 millisieverts) per hour through 1 rem (0.01 sievert) per hour.

5.8.2 The licensee shall have each radiation survey instrument required under RHA 5.8.1 calibrated:

5.8.2.1 At intervals not to exceed 6 months and after instrument servicing, except for battery changes;

5.8.2.2 For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 2 and 1000 millirems (0.02 and 10 millisieverts) per hour; and

5.8.2.3 So that an accuracy within plus or minus 20 percent of the calibration source can be demonstrated at each point checked.

5.8.3 Each licensee shall maintain records of the calibrations of its radiation survey instruments and retain each record for 3 years after it is made.

R.61-63.5.9 is revised to read:

RHA 5.9 LEAK TESTING, REPAIR, TAGGING, OPENING, MODIFICATION AND REPLACEMENT OF SEALED SOURCES

5.9.1 The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing, repair, tagging, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the Department in accordance with RHA 5.4 the U.S. Nuclear Regulatory Commission, or any Agreement State.

5.9.2 Each licensee who uses a sealed source shall have the source tested for leakage at intervals not to exceed 6 months. The leak testing of the source must be performed using a method approved by the Nuclear Regulatory Commission or by an Agreement State. The wipe sample should be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis.

5.9.3 Each licensee shall maintain records of leak test results for sealed sources and for devices containing DU. The results must be stated in units of microcuries (becquerels). The licensee shall retain each record for 3 years after it is made or until the source in storage is removed.

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5.9.4 Any test conducted pursuant to RHA 5.9.2 which reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with regulations of the Department. Within five days after obtaining results of the leak test, the licensee shall file a report with the Department describing the equipment involved, the test results and the corrective action taken.

5.9.5 Each exposure device using depleted uranium (DU) shielding and an □S□tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of .005 microcuries (185 Bq) of radioactive material on the test sample and must be performed by a person specifically authorized by the Department or an Agreement State to perform the analysis. Should such testing reveal the presence of .005 microcuries (185 Bq) or more of removable DU contamination, the exposure device must be removed from use until an evaluation of the wear on the S-tube has been made. Should the evaluation reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device however, the device must be tested for DU contamination if the interval of storage exceeded 12 months. A record of the DU leak-test must be made in accordance with RHA 5.9.3.

5.9.6 Unless a sealed source is accompanied by a certificate from the transferor that shows that it has been leak tested within 6 months before the transfer, it may not be used by the licensee until tested for leakage. Sealed sources that are in storage and not in use do not require leak testing, but must be tested before use or transfer to another person if the interval of storage exceeds 6 months.

R.61-63.5.10 is revised to read:

RHA 5.10 QUARTERLY INVENTORY AND RECEIPT/TRANSFER RECORDS

5.10.1 Each licensee shall conduct a quarterly physical inventory to account for all sealed sources and for devices containing depleted uranium received and possessed under this license.

5.10.2 The licensee shall maintain records of the quarterly inventory and retain each record for 3 years after it is made.

5.10.3 The record must include the date of the inventory, name of the individual conducting the inventory, radionuclide, number of becquerels (curies) or mass (for DU) in each device, location of sealed source and/or devices, and manufacturer, model, and serial number of each sealed source and/or device, as appropriate.

5.10.4 Each licensee shall maintain records showing the receipts and transfers of sealed sources and devices using DU for shielding and retain each record for 3 years after it is made.

5.10.5 These records must include the date, the name of the individual making the record, radionuclide, number of curies (becquerels) or mass (for DU), and manufacturer, model, and serial number of each sealed source and/or device, as appropriate.

R.61-63.5.11 is revised to read:

RHA 5.11 UTILIZATION LOGS.

5.11.1 Each licensee shall maintain utilization logs showing for each sealed source the following information:

5.11.1.1A description, including the make, model, and serial number of the radiographic exposure device or transport or storage container in which the sealed source is located;

5.11.1.2The identity and signature of the radiographer to whom assigned; and

5.11.1.3The plant or site where used and dates of use, including the dates removed and returned to storage.

5.11.2 The licensee shall retain the logs required by RHA 5.11.1 for 3 years after the log is made.

R.61-63.5.12 is revised to read:

RHA 5.12 TRAINING

5.12.1 The licensee may not permit any individual to act as a radiographer until the individual:

5.12.1.1Has received training in the subjects in RHA 5.12.7, in addition to a minimum of 2 months of on-the-job training, and is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A, RHA 5.26. (An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555-0001) or

5.12.1.2 The licensee may, for two years following the effective date of regulations, allow an individual who has not met the requirements of RHA 5.12.1.1 to act as a radiographer after the individual has received training in the subjects outlined in RHA 5.12.7 and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the Department.

5.12.2 In addition, the licensee may not permit any individual to act as a radiographer until the individual:

5.12.2.1 Has received copies of and instruction in the requirements described in Department regulations contained in this part; in RHA 6.7, and 2.1.2; in the applicable sections of parts III and VI; in applicable DOT regulations as referenced in 10 CFR part 71, in the specific license(s) under which the radiographer will perform industrial radiography, and the licensee's operating and emergency procedures;

5.12.2.2 Has demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material.

5.12.2.3 Has received training in the use of the licensee's radiographic exposure devices, sealed sources, in the daily inspection of devices and associated equipment, and in the use of radiation survey instruments.

5.12.2.4 Has demonstrated understanding of the use of radiographic exposure devices, sources, survey instruments and associated equipment described in RHA 5.12.2.1 and 5.12.2.3 by successful completion of a practical examination covering this material.

5.12.3 The licensee may not permit any individual to act as a radiographer's assistant until the individual:

5.12.3.1 Has received copies of and instruction in the requirements described in Department regulations contained in this part, in RHA 6.7 and 2.1.2, in the applicable sections of parts III and VI, in applicable DOT regulations as referenced in 10 CFR part 71, in the specific license(s) under which the radiographer's assistant will perform industrial radiography, and the licensee's operating and emergency procedures;

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5.12.3.2 Has developed competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, associated equipment, and radiation survey instruments that the assistant will use; and

5.12.3.3 Has demonstrated understanding of the instructions provided under RHA 5.12.3.1 of this section by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in 5.12.3.2 of this section by successfully completion of a practical examination on the use of such hardware.

5.12.4 The licensee shall provide annual refresher safety training for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

5.12.5 Except as provided in RHA 5.12.5.4, the RSO or designee shall conduct an inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the Department's regulations, license requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

5.12.5.1 Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed 6 months; and

5.12.5.2 Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of RHA 5.12.2.3 and the radiographer's assistant must re-demonstrate knowledge of the training requirements of RHA 5.12.3.2 by a practical examination before these individuals can next participate in a radiographic operation.

5.12.5.3 The Department may consider alternatives in those situations where the individual serves as both radiographer and RSO.

5.12.5.4 In those operations where a single individual serves as both radiographer and RSO, and performs all radiography operations, an inspection program is not required.

5.12.6 The licensee shall maintain records of the above training to include certification documents, written and practical examinations, refresher safety training and inspections of job performance in accordance with RHA 5.12.10.

5.12.7 The licensee shall include the following subjects required in RHA 5.12.1 of this section:

5.12.7.1 Fundamentals of radiation safety including:

5.12.7.1.1 Characteristics of gamma radiation;

5.12.7.1.2 Units of radiation dose and quantity of radioactivity;

5.12.7.1.3 Hazards of exposure to radiation;

5.12.7.1.4 Levels of radiation from licensed material; and

5.12.7.1.5 Methods of controlling radiation dose (time, distance, and shielding);

5.12.7.2 Radiation detection instruments including:

5.12.7.2.1 Use, operation, calibration, and limitations of radiation survey instruments;

5.12.7.2.2 Survey techniques; and

5.12.7.2.3 Use of personnel monitoring equipment;

5.12.7.3 Equipment to be used including:

5.12.7.3.1 Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed).

5.12.7.3.2 Storage, control, and disposal of licensed material; and

5.12.7.3.3 Inspection and maintenance of equipment.

5.12.7.4 The requirements of pertinent Federal and State regulations; and

5.12.7.5 Case histories of accidents in radiography.

5.12.8 Licensees will have until one year following the effective date of these regulations to comply with the additional training requirements specified in RHA 5.12.2.1 and RHA 5.12.3.1.

5.12.9 Licensees will have until two years following the effective date of these regulations to comply with the certification requirements specified in RHA 5.12.1.1. Records of radiographer certification maintained in accordance with RHA 5.12.10.1 provide appropriate affirmation of certification requirements specified in RHA 5.12.1.1.

5.12.10 Each licensee shall maintain the following records (of training and certification) for 3 years after the record is made:

5.12.10.1 Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, and names of individuals conducting and receiving the oral and practical examinations; and

5.12.10.2 Records of annual refresher safety training and semi-annual inspections of job performance for each radiographer and each radiographer's assistant. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance, the records must also include a list showing the items checked and any non-compliances observed by the RSO.

R.61-63.5.13 is revised to read:

RHA 5.13 OPERATING AND EMERGENCY PROCEDURES

The licensee's operating and emergency procedures shall include instructions in at least the following:

5.13.1 The handling and use of sources of radiation to be employed such that no person is likely to be exposed to radiation doses in excess of the limits established in these regulations;

5.13.2 Methods and occasions for conducting radiation surveys;

5.13.3 Methods for controlling access to radiographic areas;

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5.13.4 Methods and occasions for locking and securing radiographic exposure devices, transport and storage containers and sealed sources;

5.13.5 Personnel monitoring and the use of personnel monitoring equipment, including steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarm rate meter alarms unexpectedly.

5.13.6 Transporting sources of radiation to field locations, including packing of sources of radiation in the vehicles, posting of sources of radiation in the vehicles, posting of vehicles, and control of sources of radiation during transportation;

5.13.7 Minimizing exposure of individuals in the event of an accident;

5.13.8 The procedure for notifying proper persons in the event of an accident;

5.13.9 Maintenance of records; and

5.13.10 The inspection, maintenance, and operability checks of radiographic exposure devices, survey instruments, transport containers, and storage containers;

5.13.11 The procedure(s) for identifying and reporting defects and noncompliance, as required by Part VI of these regulations.

5.13.12 Source recovery procedure if licensee will perform source recovery;

5.13.13 Each licensee shall maintain a copy of current operating and emergency procedures until the Department terminates the license. Superseded material must be retained for 3 years after the change is made. Location of these documents shall be in accordance with RHA 5.24.

R.61-63.5.14 is revised to read:

RHA 5.14 PERSONNEL MONITORING CONTROL

5.14.1 The licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading pocket dosimeter, an alarm rate meter and either a film badge or a thermoluminescent dosimeter (TLD) except that for permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming rate meter is not required. Pocket dosimeters must have a range from zero to at least 200 milliroentgens and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters. Each film badge and TLD must be assigned to and worn by only one individual.

5.14.2 Pocket dosimeters or electronic personal dosimeters must be read and exposures recorded at the beginning and end of each shift. The licensee shall retain each record of these exposures for two years after the record is made.

5.14.3 Pocket dosimeters or electronic personal dosimeters shall be checked at periods not to exceed one year for correct response to radiation. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure. Records must be maintained for two years after the operability test is performed.

5.14.4 If an individual's pocket dosimeter is found to be off-scale, or if his or her electronic personal dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or TLD must be sent for processing within 24 hours. In

addition, the individual may not resume work associated with licensed material use until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in records to be maintained by the licensee until the Department terminates the license.

If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged must be included in the records to be maintained until the Department terminates the license.

5.14.5 Film badges must be replaced at periods not to exceed one month and TLD's must be replaced at periods not to exceed three months. After replacement, each film badge or TLD must be processed as soon as possible. Reports received from the film badge or TLD processor must be retained for inspection until the Department terminates each license that authorizes the activity that is subject to the record keeping requirement or until the Department authorizes their disposal.

5.14.6 Each alarm rate meter must:

5.14.6.1 Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

5.14.6.2 Be set to give an alarm signal at a preset dose rate of 500 mR/hr.;

5.14.6.3 Require special means to change the preset alarm function; and

5.14.6.4 Be calibrated at periods not to exceed one year for correct response to radiation: Acceptable rate meters must alarm within plus or minus 20 percent of the true radiation dose rate. Records of these calibrations must be maintained for two years.

R.61-63.5.15 is revised to read:

RHA 5.15 SURVEILLANCE

During each radiographic operation the radiographer, or the other individual present, as required by RHA 5.21, shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Part III, except at permanent radiographic installations where all entryways are locked and the requirements of RHA 5.20 are met.

R.61-63.5.16: No changes

R.61-63.5.17 is revised to read:

RHA 5.17 RADIATION SURVEYS AND SURVEY RECORDS

The licensee shall ensure that:

5.17.1 A sufficient number of adequately calibrated and operable radiation survey instruments are available at the location of its radiographic operations whenever radiographic operations are being performed, and at the storage area, as defined in RHA 5.3.33 whenever a radiographic exposure device, a storage container, or source is being placed in storage.

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5.17.2 A survey with a calibrated and operable radiation survey instrument is made after each exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed. If the radiographic exposure device has a source guide tube, the survey must include the guide tube. The survey must determine that the sealed source has returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

5.17.3 A survey with a calibrated and operable radiation survey instrument is made at any time a source is exchanged and whenever a radiographic exposure device is placed in a storage area as defined in RHA 5.3.33 to determine that the sealed source is in its shielded position. The entire circumference of the radiographic exposure device must be surveyed.

5.17.4 A record of the storage survey required in RHA 5.17.3 is made and is retained for three years for inspection by the Department when that storage survey is the last one performed in the work day.

R.61-63.5.18: No changes

R.61-63.5.19 is revised to read:

RHA 5.19 INSPECTION AND MAINTENANCE OF RADIOGRAPHIC EXPOSURE DEVICES, TRANSPORT AND STORAGE CONTAINERS, ASSOCIATED EQUIPMENT, SOURCE CHANGERS AND SURVEY INSTRUMENTS.

5.19.1 The licensee shall perform visual and operability checks on survey meters, radiographic exposure devices, transport and storage containers, associated equipment and source changers before use on each day the equipment is to be used to ensure that the equipment is in good working condition, that the sources are adequately shielded, and that required labeling is present. Survey instrument operability must be performed using check sources or other appropriate means. If equipment problems are found, the equipment must be removed from service until repaired.

5.19.2 Each licensee shall have written procedures for:

5.19.2.1 Inspection and routine maintenance of radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. Replacement components shall meet design specifications. If equipment problems are found, the equipment must be removed from service until repaired.

5.19.2.2 Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials. The inspection and maintenance program must include procedures to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

5.19.3 Records of equipment problems and of any maintenance performed under paragraphs 5.19.1 and 5.19.2 of this section must be made in accordance with the following:

5.19.3.1 Each licensee shall maintain records of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments; and retain each record for 3 years after it is made.

5.19.3.2 The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair and/or maintenance, if any, was done.

R.61-63.5.20 is revised to read:

RHA 5.20 PERMANENT RADIOGRAPHIC INSTALLATION

5.20.1 Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either:

5.20.1.1 An entrance control of the type described in RHA 3.18.1.1 that reduces the radiation level upon entry into the area, or

5.20.1.2 Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

5.20.2 The alarm system must be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test must include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry (designated in RHA 5.20.1.1) must be tested monthly. If an entrance control device or an alarm is operating improperly, it must be immediately labeled as defective and repaired within 7 calendar days. The facility may continue to be used during this 7-day period, provided the licensee implements the continuous surveillance requirements of RHA 5.15 and uses an alarming rate meter.

5.20.3 Each licensee shall maintain records of alarm system and entrance control device tests required under RHA 5.20.2 and retain each record for 3 years after it is made.

R.61-63.5.21 is revised to read:

RHA 5.21 CONDUCTING INDUSTRIAL RADIOGRAPHIC OPERATIONS.

5.21.1 Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of RHA 5.12.3. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

5.21.2 All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the Department.

5.21.3 A licensee may conduct lay-barge, offshore platform, or underwater radiography only if procedures have been approved by the Department, by an Agreement State, or by the Nuclear Regulatory Commission.

5.21.4 Licensees will have until one year from the effective date of these regulations to meet the requirements for having two qualified individuals present at locations other than a permanent radiographic installation as specified in RHA 5.21.1.

R.61-63.5.22 is revised to read:

RHA 5.22 RADIATION SAFETY OFFICER FOR INDUSTRIAL RADIOGRAPHY.

The RSO shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

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5.22.1 The minimum qualifications, training, and experience for RSOs for industrial radiography are as follows:

5.22.1.1 Completion of the training and testing requirements of RHA 5.12.1;

5.22.1.2 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

5.22.1.3 Formal training in the establishment and maintenance of a radiation protection program.

5.22.2 The Department will consider alternatives when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

5.22.3 The specific duties and authorities of the RSO include, but are not limited to:

5.22.3.1 Establishing and overseeing all operating, emergency, and ALARA procedures as required by Part III of these regulations, and reviewing them regularly to ensure that the procedures in use conform to current Part III procedures, conform to other Departmental regulations and to the license conditions.

5.22.3.2 Overseeing and approving all phases of the training program for radiographic personnel, ensuring and appropriate and effective radiation protection practices are taught.

5.22.3.3 Ensuring that required radiation surveys and leak tests are performed and documented in accordance with the regulations, including any corrective measures when levels of radiation exceed established limits;

5.22.3.4 Ensuring that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by RHA 3.46 of this regulation; and

5.22.3.5 Ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

5.22.4 Licensees will have until two years following the effective date of these regulations to meet the requirements of RHA 5.22.1 or 5.22.2.

New R.61-63.5.23 and R.61-63.5.24 are added to read:

RHA 5.23 FORM OF RECORDS.

Each record required by this part must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

RHA 5.24 LOCATION OF DOCUMENTS AND RECORDS.

5.24.1 Each licensee shall maintain copies of records required by this part and other applicable parts of this regulation at the location specified in RHA 5.4.11.

5.24.2 Each licensee shall also maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary jobsite:

- 5.24.2.1 The license authorizing the use of licensed material;
- 5.24.2.2 A copy of parts II, III and V of Radioactive Materials Regulation 61-63, Title A.
- 5.24.2.3 Utilization records for each radiographic exposure device dispatched from that location as required by RHA 5.11;
- 5.24.2.4 Records of equipment problems identified in daily checks of equipment as required by RHA 5.19.3.1;
- 5.24.2.5 Records of alarm system and entrance control checks required by RHA 5.20.3 if applicable;
- 5.24.2.6 Records of direct reading dosimeters such as pocket dosimeter and/or electronic personal dosimeters readings as required by RHA 5.14;
- 5.24.2.7 Operating and emergency procedures required by 5.13.13;
- 5.24.2.8 Evidence of the latest calibration of the radiation survey instruments in use at the site, as required by RHA 5.8.3;
- 5.24.2.9 Evidence of the latest calibrations of alarm rate meters and operability checks of pocket dosimeters and/or electronic personal dosimeters as required by RHA 5.14;
- 5.24.2.10 Latest survey records required by RHA 5.17.4;
- 5.24.2.11 The shipping papers for the transportation of radioactive materials required by RHA 2.22; and
- 5.24.2.12 When operating under reciprocity pursuant to RHA 2.21, a copy of the NRC or Agreement State license authorizing the use of licensed materials.

Existing R.61-63.5.22 is revised to R.61-63.5.25 to read:

RHA 5.25 REPORTING REQUIREMENTS

5.25.1 In addition to the reporting requirements specified in RHA 2.32, each licensee shall provide a written report to the S.C. Department of Health & Environmental Control, Bureau of Radiological Health, 2600 Bull Street, Columbia, S.C. 29201 within 30 days of the occurrence of any of the following incidents involving radiographic equipment.

- 5.25.1.1 Unintentional disconnection of the source assembly from the control cable.
- 5.25.1.2 Inability to retract the source assembly to its fully shielded position and secure it in this position.
- 5.25.1.3 Failure of any component (critical to safe operation of the device) to properly perform its intended function.

5.25.2 The licensee shall include the following information in each report submitted under RHA 5.25.1 of this section:

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- 5.25.2.1 A description of the equipment problem.
- 5.25.2.2 Cause of each incident, if known.
- 5.25.2.3 Manufacturer and model number of equipment involved in the incident.
- 5.25.2.4 Corrective actions taken or planned to prevent recurrence.
- 5.25.2.7 Qualifications of personnel involved in the incident.

5.25.3 Reports of overexposure submitted under RHA 3.46 which involve failure of safety components of radiography equipment must also include the information specified in RHA 5.25.2 of this section.

New R.61-63.5.26 Appendix A is added to read:

RHA 5.26 APPENDIX A. RADIOGRAPHER CERTIFICATION

5.26.1 Requirements for an Independent Certifying Organization. An independent certifying organization shall:

5.26.1.1 Be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography;

5.26.1.2 Make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or disability;

5.26.1.3 Have a certification program open to nonmembers, as well as members;

5.26.1.4 Be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;

5.26.1.5 Have an adequate staff, a viable system for financing its operations, and a policy-and decision-making review board;

5.26.1.6 Have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies;

5.26.1.7 Have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

5.26.1.8 Have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

5.26.1.9 Have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program;

5.26.1.10 Have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals;

5.26.1.11 Have procedures for proctoring examinations, including qualifications for proctors. These procedures must ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

5.26.1.12 Exchange information about certified individuals with the Department and other independent certifying organizations and/or Agreement States and allow periodic review of its certification program and related records; and

5.26.1.13 Provide a description to the Nuclear Regulatory Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

5.26.2 Requirements for Certification Programs. All certification programs must:

5.26.2.1 Require applicants for certification to:

5.26.2.1.1 Receive training in the topics set forth in RHA 5.12.7 or equivalent Agreement State regulations, and

5.26.2.1.2 Satisfactorily complete a written examination covering these topics;

5.26.2.2 Require applicants for certification to provide documentation that demonstrates that the applicant has:

5.26.2.2.1 Received training in the topics set forth in RHA 5.12.7 or equivalent Agreement State regulations;

5.26.2.2.2 Satisfactorily completed a minimum period of on-the-job training; and

5.26.2.2.3 Has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer;

5.26.2.3 Include procedures to ensure that all examination questions are protected from disclosure;

5.26.2.4 Include procedures for denying an application, revoking, suspending, and reinstating a certificate;

5.26.2.5 Provide a certification period of not less than 3 years nor more than 5 years;

5.26.2.6 Include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and annual refresher training.

5.26.2.7 Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

5.26.3 Requirements for Written Examinations. All examinations must be:

5.26.3.1 Designed to test an individual's knowledge and understanding of the topics listed in RHA 5.12.7 or equivalent Agreement State requirements or NRC requirements;

5.26.3.2 Written in a multiple-choice format;

5.26.3.3 Have test items drawn from a question bank containing psychometrically valid questions based on the material in RHA 5.12.7.

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Statement of Need and Reasonableness:

The statement of need and reasonableness was determined based on staff analysis pursuant to S.C. Code Section 1-23-115(c)(1)-(3) and (9)-(11):

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

Purpose: To amend Regulation 61-63 in accordance with changes to Federal Regulation 10 CFR Part 20, 30, 34, and 35.

Legal Authority: This change to state law is authorized by S.C. Code Section 13-7-40 and required by Section 274 of the Atomic Energy Act, 40 U.S.C. Section 2021b.

Plan for Implementation: Existing staff of the Bureau of Radiological Health will implement these changes. The additional requirements are expected to require 30 man days of effort. Impact on other program areas will be slight.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION AND EXPECTED BENEFIT: This regulatory amendment is exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because each change is necessary to maintain compatibility with Federal regulations. In amending the Federal regulations, the U.S. Nuclear Regulatory Commission found the following:

The regulation provides recognition of Agreement State Licenses in areas under exclusive federal jurisdiction within an Agreement State.

The regulation revises the criteria for the release of individuals administered radioactive material.

The regulation incorporates numerous additions to the industrial radiography licensing and operational requirements. Included in this section are requirements for radiographer certification.

The regulation exempts the radioactive drug Carbon-14 urea for "in-vivo" diagnostic use.

The regulation identifies a Deliberate Misconduct Rule and outlines applicable enforcement actions.

DETERMINATION OF COSTS AND BENEFITS: No additional cost will be incurred by the State or its political subdivisions by the implementation of this amendment. Existing staff and resources will be utilized to implement this amendment to the regulation. It is anticipated that the amendment will not create any significant additional cost to the regulated community based on the fact that the 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: It is necessary to update existing regulations as changes occur at the federal level in order to maintain compatibility with the federal government and other Agreement States. This will 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. The amendments eliminate possible duplicative or redundant requirements.

Document No. 2461
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: Section 44-1-40, 1976 Code of Laws

R.61-47. Shellfish

Synopsis:

Amendment of R.61-47 will aid the state in conforming with guidance provided on harvesting, processing, and distribution of shellfish for human consumption, in the National Shellfish Sanitation Program (NSSP) Model Ordinance as adopted by the Interstate Shellfish Sanitation Conference and used by the United States Food and Drug Administration in evaluating state programs. This includes incorporating new language and requirements for molluscan shellfish relating to Hazard Analysis Critical Control Points (HACCP) insuring compliance with the NSSP. The amendment will add new definitions in addition to stylistic changes addressing language, and grammatical errors, for clarity throughout regulation. Compliance with the NSSP Model Ordinance is necessary in order to maintain approval for the shipment of South Carolina Shellfish products in interstate commerce.

Discussion of Revisions

<u>SECTION</u>	<u>CHANGE</u>
Table of Contents	Editorial changes
A.2(d)	Revisions clarify definition of Aquaculture
A.2	Nine new definitions are added.
C.2(a)(2)(a), C.2(a)(2)(a)(i) & (ii)	Subitems are revised to clarify tagging requirements for molluscan shellfish products.
C.2(a)(2)(a)(vii)&(viii)	New subitems are added to include additional information on requirements for shellfish tags.
C.2(a)(2)(b)	Subitem introductory paragraph is revised to capitalize the words “certified shipper” for consistency. Subitems C.2(a)(2)(b)(i) through (v) are unchanged.
C.2(a)(4)	New subitem added to modify distribution requirements for harvested shellfish.
C.2(a)(5)	New subitem added to clarify tagging requirements for molluscan shellfish.
C.2(b)(2)	Existing subitem C.2(b)(2) is deleted because it duplicates requirements of existing subitem C.2(b)(3). Remaining existing subitems C.2(b)(3), (4) and (5) are renumbered to C.2(b)(2), (3) and (4).
C.2(b)(5)(i)	Existing subitem C.2(b)(5)(i) is renumbered to C.2(b)(4)(i) and text is revised to clarify intent of requirement.
C.2(b)(6)	Existing subitem C.2(b)(6) is renumbered to C.2(b)(5) - stylistic change.
C.2(c)	Subitem is revised to add reference to use of “ice” related to shellfish activities. The word “shellstock” is revised to “shellfish” for consistency.

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- C.2(d) New subitem is added to clarify temperature maintenance requirements.
- C.3 Subsection is revised in entirety to modify handling requirements related to the transportation of shellfish. New subitem C.3(e) is added in this revision to include shipping document requirement.
- D.3 Existing D.3 is revised in its entirety to D.3, D.3(a) through D.3(d). This revision defines construction and operational requirements for wet storage facilities, and implements a requirement for wet storage facility construction permits. The intent of the construction permit requirement is to provide some level of assurance to permit applicants that viable proposals will be granted operational permits if all requirements of the regulation are met.
- F.2 Stylistic change is made for clarification.
- G.1(b), G.1(b)(1) thru (10) G.1(b) capitalizes word “certified shipper” for consistency. Other subitems are revised to modify construction and operational permits or certificates for wet storage, aquaculture and depuration facilities.
- G.1(e) Subitem is revised to modify depuration harvest permits requirements.
- G.1(g) New subitem is added to clarify requirements for shellfish distribution by non-certified firms.
- G.2 Introductory Introductory is revised to add words “and Certificates.”
- G.2(b) Subitem is revised to define time frame requirements for facility inspection relating to certification issuance or renewal.
- G.2(c) New subitem is added to include language requiring HACCP plan as required by Title 21CFR prior to certification.
- G.2(d) Existing G.2(c) is renumbered to G.2(d) - stylistic change.
- H.1(b) Revised to change the word “render” to “cause.”
- H.1(d) Subitem is revised to modify to include regarding failure to cooperate with Department personnel as it relates to revocation of permits or certification.
- I.1. Introductory
and I.1(a) Subitems are revised to reference compliance with 21CFR (HACCP) for certified shippers.
- I.1(c)(1) Subitem is revised for consistency in language use.
- I.1(c)(1)(10) Revision corrects temperature requirement error.
- I.1(f) Subitem is revised for consistency in language use.
- I.1(g) Subitem is revised to clarify language use.

- I.1(j) Revised - stylistic change.
- I.1(k) Revised - stylistic change.
- I.1(l) & I.1(l)(1) Subitems are revised to I. I(1), I.1(l)(1)-(4) to create product recall requirements for certified shippers.
- J.2(g) Introductory Subitem introductory is revised to further define shellfish record keeping requirements for certified dealers. J.2(g)(1)-(7) are unchanged.
- J.2(h) Subitem is revised to delete existing language moved to another location. New language is added to define shipping document requirements for shucker/packer facilities.
- J.3(e) Subitem is revised to delete specific time requirements for heat shock process.
- K.6 Introductory Subitem is revised to clarify shellfish repacker facility record keeping requirements. K.6(a)-(f) are unchanged.
- K.7 Subitem is revised to delete existing language moved to another location. New language is added to define shipping document requirements for repacker facilities.
- L.3. Subitem is revised to add language moved from another section for clarity. L.3(a)-(e) are unchanged.
- L.3(f) Subitem is revised to delete language moved to another section and new language is added to define shipping document requirements for shellstock shipper facilities.
- M.3(a) Subitem is revised to add language moved from another section for clarity. M.3(a)(1)-(6) are unchanged.
- M.3(b) Subitem is revised to delete existing language moved to another location. New language is added to define shipping document requirements for reshipper facilities.
- N.1(a), (b) & (c) Subitems are revised to outline requirements for depuration facility construction and operating permit.
- N.2(a) Subitem revised to change the word “plant” to “facility” for consistency throughout regulation.
- N.3(a)(1) Subitem is revised to include reference.
- N.3(b) & (c) Subitems are revised stylistically for consistency and to clarify references.
- N.3(f)(1) Subitem is revised to clarify reference.
- N.3(h) Subitem is revised stylistically for consistency and to clarify references.
- O.1(b)(1)&(2) Subitems are revised to O.1(b)(1)-(3). Changes outline requirements for aquaculture facility construction and operating permits.
- O.1(c) New subitems O.1(c) through O.1(c)(2) are added to outline additional requirements for certification and permitting of aquaculture operations. Existing subsections O.1(c) through O.1(j)(3) are changed stylistically to O.1(d) through O.1(k).

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- O.5 Section is revised to add new language which clarifies section pertaining to polyculture permit applicants. Subitems O.5(1)-(3) are renumbered to O.5(a) through (c).

Instructions: Amend R.61-47 pursuant to each individual instruction provided with the text of each amendment below.

Text:

Replace Table of Contents in entirety:

- A. GENERAL PROVISIONS.
 - 1. Purpose and Scope.
 - 2. Definitions.

- B. GROWING AREA SURVEY AND CLASSIFICATION.
 - 1. Sanitary Survey.
 - 2. Classification of Growing Area.
 - 3. Approved Area.
 - 4. Conditionally Approved Area.
 - 5. Restricted Area.
 - 6. Conditionally Restricted Area.
 - 7. Prohibited Area.

- C. HARVESTING, HANDLING, AND TRANSPORTATION OF SHELLFISH.
 - 1. Harvesting.
 - 2. Handling.
 - 3. Transportation.

- D. SPECIAL SHELLSTOCK HANDLING.
 - 1. Relaying.
 - 2. Interstate Relaying.
 - 3. Wet Storage.
 - 4. Depletion of Closed Areas.

- E. SHELLFISH SAMPLING AND STANDARDS.
 - 1. Sampling and Testing.
 - 2. Adulteration Standards

- F. LABORATORY PROCEDURES.
 - 1. General.
 - 2. Microbiological.
 - 3. Physical and Chemical.

- G. CERTIFICATION AND PERMITTING PROCEDURES.
 - 1. General.
 - 2. Issuance of Permits and Certificates.
 - 3. Operations Outside Department Jurisdiction.

- H. COMPLIANCE AND INSPECTION PROCEDURES.
 - 1. Compliance.
 - 2. Inspections.

- I. CERTIFIED SHIPPER FACILITIES.
 - 1. General Sanitation and Controls for Certified Shippers.
 - 2. Personnel/Supervision.
 - 3. Construction and Maintenance of Physical Facilities.

- J. SHUCKER-PACKERS
 - 1. Shucking Area and Equipment Requirements.
 - 2. Shucking-Packing Operations.
 - 3. Heat Shock Processing of Shellfish for Shucking.

- K. REPACKERS.

- L. SHELLSTOCK SHIPPERS.
 - 1. Source.
 - 2. Containers.
 - 3. Records.

- M. RESHIPPERS.
 - 1. Source.
 - 2. Refrigeration.
 - 3. Records.

- N. DEPURATION.
 - 1. General Administration.
 - 2. Facility Design and Equipment.
 - 3. Depuration Facility Operations.

- O. SHELLFISH AQUACULTURE.
 - 1. General.
 - 2. Seed.
 - 3. Open Water Aquaculture.
 - 4. Land Based Shellfish Aquaculture.
 - 5. Aquaculture Permit Applicants Engaging in Polyculture Activities
 - 6. Activities Related to Seed Production.
 - 7. Operators of Shellfish Mariculture Areas

- P. REMEDIES.
 - 1. General.
 - 2. Criminal Liability.

Replace section A.2(d), definition of Aquaculture, to read:

Aquaculture means the cultivation of shellfish in land-based artificial growing or harvest areas, or confined in natural growing or harvest areas as designated by permit from South Carolina Department of Natural Resources. For purposes of this regulation, aquaculture is synonymous with mariculture.

Add nine new definitions at Section A.2, Definitions, in alpha-numeric order and renumber remaining definitions:

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Coliform group means all of the aerobic and facultative anaerobic, gram negative, nonspore forming, rod shaped bacilli which ferment lactose broth with gas formation within 48 hours at 95 Fahrenheit (Centigrade).

Commingle or Commingling means the act of combining different lots of shellstock or shucked shellfish.

Critical Control Point {CCP} means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated or reduced to acceptable levels.

Critical deficiency means a condition or practice which results in the production of a product that is unwholesome or presents a threat to the health or safety of the consumer.

Critical limit means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.

Fecal coliform means that portion of the coliform group which will produce gas from lactose in an EC or A-1 multiple tube procedure liquid medium within 24 (+ 2) hours in a water bath maintained at 112° Fahrenheit (44.5° 0.2° Centigrade).

HACCP is an acronym that stands for Hazard Analysis Critical Control Point, a systematic, science based approach used in food production as a means to assure food safety.

HACCP Plan means a written document that delineates the formal procedures that a processor follows to implement the HACCP requirements set forth in 21CFR123.6 as adopted by the Interstate Shellfish Sanitation Conference.

Harvest means the act of removing shellstock from growing areas and its placement on or in manmade conveyance or other means of transport.

Replace sections C.2(a)(2)(a), C.2(a)(2)(a)(i) and C.2(a)(2)(a)(ii); existing sections C.2(a)(2)(a)(iii) through C.2(a)(2)(a)(vi) remain the same:

(a) Sale Tags - Shellstock offered for sale shall be tagged with a sale tag. Sale tags shall be attached to each container of shellstock prior to sale or distribution. The information on the tag shall be accurate, legible, complete, and arranged in the specific order as follows:

(i) The name, address and State Shellfish Control Agency (SSCA) certification number assigned to the Certified Shipper possessing the shellfish;

(ii) The SSCA assigned Certified Shipper certification number of the original processor, including the state abbreviation;

Add new C.2(a)(2)(a)(vii) and (viii) to read:

(vii) When the shellstock has been placed in wet storage, the statement: "THESE SHELLFISH ARE A PRODUCT OF (ORIGINAL PRODUCING STATE) AND WERE WET STORED AT (SOUTH CAROLINA CERTIFICATION NUMBER) FROM (DATE) TO (DATE)" shall be included on the tag.

(viii) Sale tags shall contain the following (or substantially equivalent) consumer advisory message: "RETAILERS, INFORM YOUR CUSTOMERS - CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOOD BORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS."

Replace section C.2(a)(2)(b) introductory; subitems C.2(a)(2)(b)(i) through (v) remain the same:

(b) Harvest Tags - Shellstock awaiting delivery to a Certified Shipper shall be tagged with a harvest tag. The information on this tag shall be legible and include the following information:

Add section C.2(a)(4) to read:

(4) Shellstock harvested from State Waters shall be delivered only to the Certified Shipper specified on the harvest tag utilized during harvest.

Add section C.2(a)(5) to read:

(5) Shellstock harvested from State waters and placed in storage at the facilities of a Certified Shipper shall remain tagged with a harvest tag prior to sale, distribution, or re-tagging with a sale tag.

Replace section C.2(b) to read:

(b) Shucked Shellfish Labeling and Identification - Packages of shucked shellfish or frozen shucked shellfish meat shall be labeled as follows:

(1) All packages of shucked shellfish or frozen shucked shellfish shall be labeled to comply with the requirements of the Federal Fair Packaging and Labeling Act as adopted under Section 39-25-120 of the South Carolina Food and Cosmetic Act:

(2) All packages of shucked shellfish or frozen shucked shellfish shall be labeled to comply with the requirements of Section 39-25-160 of the South Carolina Food and Cosmetic Act;

(3) The principal display panel of all packages of shucked shellfish or frozen shucked shellfish shall contain the certification number of the shucker-packer or repacker;

(4) All packages of shucked shellfish or frozen shucked shellfish shall be dated in the following manner;

(i) The lid, and side wall or bottom, of all packages of shucked or frozen shucked shellfish with a net weight of sixty-four fluid ounces or more shall legibly display the word "SHUCKED" followed by the actual date of sucking;

(ii) The principal display panel of all packages of shucked or frozen shucked shellfish with a net weight of less than sixty-four fluid ounces shall legibly display the words "SELL BY" followed by the shucker-packer's recommended last date of sale;

(iii) The date shall consist of the common abbreviation for the month of the year and the day of the month, or the numerical day of the year (Julian calendar day). For frozen shucked shellfish, the year will be added to the date.

(5) Frozen shucked shellfish shall be labeled as frozen in type of equal prominence immediately adjacent to the name of the shellfish.

Replace section C.2(c) to read:

(c) Ice - When used in shellfish handling activities, ice shall be sanitary and from a source approved by the Department.

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Add new section C.2(d) to read:

(d) Temperature Maintenance - Within twenty hours after harvest, shellfish shall be placed under temperature control and be maintained between thirty-four and forty-five degrees Fahrenheit (one and seven degrees centigrade). This temperature shall be maintained during all handling of shellstock or shucked shellfish.

Replace section C.3 to read:

3. Transportation of Shellfish - Vehicles used for transporting shellfish shall be constructed, operated, and maintained to prevent contamination of shellfish. Shellfish transported in unenclosed vehicles shall be covered by tarpaulins or similar covers.

(a) Within twenty hours after harvest, shellfish shall be placed under temperature control and be maintained between thirty-four and forty-five degrees Fahrenheit (one and seven degrees centigrade). This temperature shall be maintained during the transportation of shellstock or unfrozen shucked shellfish.

(b) Frozen shucked shellfish in transportation shall be maintained at or below zero degrees fahrenheit (minus 18 degrees centigrade) at all times.

(c) Dogs, cats, birds, other animals, or unauthorized persons shall not be allowed in any area of a vehicle used for harvesting, holding, storage, or transportation of shellstock except that patrol dogs accompanying security or police officers are permitted.

(d) When ice is used during the transportation of shellfish, it shall be sanitary and from a source approved by the Department.

(e) Each shellfish shipment originating from a Certified Shipper shall be accompanied by a shipping document that includes the following information:

- (1) The name, address, and certification number of the shipping dealer;
- (2) The name and address of the major consignee;
- (3) The kind and quantity of the shellfish product.

Replace section D.3 in entirety to read:

3. Wet Storage - Harvested shellstock may be held in wet storage in approved shellfish growing waters or land-based ponds or tanks where effective control measures are enforced to keep shellfish fresh and protected from contamination. Proper shellstock identification as outlined in C.2 must be maintained during wet storage.

(a) Permit Requirements - Prior to the Wet Storage of molluscan shellfish in approved near-shore growing waters, application for a Wet Storage facility operating permit shall be made to and obtained from the Department. Prior to the construction, expansion or modification of any land-based Wet Storage facility, application for a Wet Storage Facility Construction Permit shall be made to, and a Wet Storage Facility Construction Permit obtained from, the Department. Prior to operating any land-based Wet Storage facility, application for a Wet Storage Operating Permit shall be made to, and a Wet Storage Operating Permit obtained from, the Department. Wet Storage Operating Permits shall be issued only in conjunction with a Certified Shipper Certificate.

(b) Wet Storage in Approved near-shore shellfish growing waters - Operating Permit Requirements. On an application form provided by the Department, general information related to the proposed construction and operation of a near-shore wet storage facility shall be submitted for Department review and approval. This information shall be provided in the form of a written operational plan detailing the scope and extent of the

proposed activity, including, but not necessarily limited to location, type of construction, and species of shellfish stored. The operational plan shall address the following:

- (1) the purpose of the wet storage activity, such as holding, conditioning, or increasing the salt content of shellstock.
- (2) any species specific physiological factors that may affect design criteria
- (3) location of near-shore storage structures
- (4) details of the design and proposed construction of the storage structures which address the following minimum construction standards to:

- (i) allow the free flow of water to shellfish; and
- (ii) be constructed of non-toxic materials; and
- (iii) be constructed so as to protect shellfish from physical, chemical or thermal conditions which may compromise shellfish survival, quality or biological activity.
- (iv) comply with section D.3(b)(2).

(c) The Department will issue an operating permit after approval of the operational plan and completion of a successful Department inspection of the constructed facility.

(d) Wet Storage in land-based ponds or tanks

(1) Construction Permit Requirements. An Operational Plan shall be provided in conjunction with the Wet Storage Facility Construction Permit application. The Operational Plan shall address the following:

(a) the purpose of the wet storage activity, such as holding, conditioning or increasing the salt content of shellstock;

(b) any species specific physiological factors that may affect design criteria;

(c) details of the design and proposed construction of the onshore storage facility as required by Section D.3(d)(2), source, quantity and quality of water to be used for wet storage as required by Section D.3(d)(3), and details of the design and proposed construction of any water treatment system.

(2) Construction Requirements- Each land-based wet storage operation shall meet the following design, construction, and operating requirements:

(a) Effective barriers shall be provided to prevent entry of birds, animals, and vermin into the area.

(b) Storage tanks and related plumbing shall be fabricated of non toxic material and shall be easily cleanable.

(c) Tanks shall be constructed so as to be easily accessible for cleaning and inspection, self-draining and fabricated from nontoxic, corrosion resistant materials.

(d) Plumbing shall be designed and installed so that it can be cleaned and sanitized on a regular schedule, as specified in the operating procedures.

(e) Storage tank design, dimensions, and construction shall be such that adequate clearance between shellstock and the tank bottom can be maintained.

(f) Shellstock containers, if used, shall be designed and constructed so that the containers allow the free flow of water to all shellstock within a container.

(g) Buildings -When a building is used for the wet storage operation:

(i) Floors, walls, and ceilings shall be constructed in compliance with the applicable provisions of Chapter I;

(ii) Lighting, plumbing, water and sewage disposal systems shall be installed in compliance with applicable provisions of Chapter I.

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(h) Outdoor Tank Operation -When the wet storage operation is outdoors or in a structure other than a building, tank covers shall be used. Tank covers shall:

- (i) Be constructed of a light colored material;
- (ii) Prevent entry of birds, animals or vermin;
- (iii) Remain closed while the system is in operation except for periods of tank loading and unloading, or cleaning.

(3) Water Supply.

(a) The quality of source water prior to treatment shall meet, at a minimum, the bacteriological standards for the restricted classification.

(b) Any well used as source water for wet storage shall be constructed, operated and maintained in accordance with all applicable Departmental regulations .

(c) Except when the source of the water is a growing area in the approved classification, a water supply sampling schedule shall be included in the dealer's operating procedures and water shall be tested according to the schedule.

(d) Results of water samples and other tests to determine the suitability of the water supply shall be maintained for at least 2 years.

(e) Disinfection or other water treatment such as the addition of salt cannot leave residues unless they are Generally Recognized as Safe (GRAS and unless they do not interfere with the shellstock's survival, quality or activity during wet storage.

(f) Disinfected water entering the wet storage tanks shall have no detectable levels of the coliform group as measured by a recognized multi-tube MPN test per 100 ml. for potable water.

(g) When the laboratory analysis of a single sample of disinfected water entering the wet storage tanks shows any positive result for the coliform group, daily sampling shall be immediately instituted until the problem is identified and eliminated.

(h) When the problem that is causing disinfected water to show a positive result for the coliform group is eliminated, the effectiveness of the correction shall be shown on the first operating day following correction through the immediate collection, within a 24 hour period, of a set of three samples of disinfected water and one sample of the source water prior to disinfection.

(i) For water that is disinfected by ultra-violet treatment, turbidity shall not exceed 20 nephelometric turbidity units (NTUs) measured in accordance with Standard Methods for the Examination of Water and Wastewater, APHA.

(ii) The disinfection unit(s) for the water supply shall be cleaned and serviced as frequently as necessary to assure effective water treatment.

(i) Continuous Flow-through Systems.

(i) If the system is of continuous flow-through design, water from a growing area classified as:

(a) Approved may be used, without disinfection, in wet storage tanks provided that the near-shore water source used for supplying the system meets the approved classification bacteriological criteria at all times that shellstock are being held in wet storage; or

(b) Other than approved may be used if the source water is continuously subjected to disinfection and it is sampled daily following disinfection.

(ii) When a source classified as other than approved is used, a study shall be required to demonstrate that the disinfection system will consistently produce water that tests negative for the coliform group under normal operating conditions. The study shall:

(a) Include five sets of three samples from each disinfection unit collected for five consecutive days at the outlet from the disinfection unit or at the inlet to at least one of the wet storage tanks served by the disinfection system;

(b) Include one sample daily for five consecutive days from the source water prior to disinfection;

(c) Use NSSP recognized methods to analyze the samples to determine coliform levels;

(d) Require all samples of disinfected water to be negative for the coliform group;

(e) Be repeated if any sample of disinfected water during the study is positive for the coliform group.

(iii) Once sanctioned for use, the water system shall be sampled daily to demonstrate that the disinfected water is negative for the coliform group.

(j) Recirculating Water System.

(i) A study shall be required to demonstrate that the disinfection system for the recirculating system will consistently produce water that tests negative for the coliform group under all operating conditions. The study shall meet the requirements in Section D.3(d)(3)(i)(ii) above.

(ii) Once sanctioned for use, the recirculating water system shall be sampled weekly to demonstrate that the disinfected water is negative for the coliform group.

(iii) When make-up water of more than 10 percent of the water volume in the recirculating system is added from a growing area source classified as other than approved, a set of three samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a 24 hour period to reaffirm the ability of the system to produce water free from the coliform group.

(iv) When ultra-violet treatment is used as the water disinfectant, each time new ultraviolet bulbs are installed, a set of three samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a 24 hour period to reaffirm the ability of the system to produce water free from the coliform group.

(k) Operating permit requirements - Following issuance of a facility specific construction permit which includes an approved operational plan and upon completion of construction of the proposed facility application for a wet storage operating permit shall be made on a form provided by the Department.

(l) The Department will issue an operational permit after approval of the application and the completion of a successful Departmental inspection of the constructed facility.

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Replace section F.2 to read:

2. Microbiological - Microbiological analyses of seawater or shellfish for microorganisms shall be in accordance with American Public Health Association Laboratory Procedures, the Food and Drug Administration Bacteriological Analytical Manual, or by other methods accepted by the Department.

Replace G.1(b), G.1(b)(1) through G.1(b)(10) to read:

(b) It shall be unlawful for any person to relay, distribute in interstate commerce, distribute to a Certified Shipper, harvest for depuration, deplete, wet store, conduct aquaculture activities, or process shellfish who does not possess the appropriate valid permit or certificate issued by the Department. The permit or certificate shall be one of the following types:

- (1) Relaying Permit;
- (2) Wet Storage Facility Operating Permit;
- (3) Wet Storage Facility Construction Permit;
- (4) Depletion of Closed Area Permit;
- (5) Depuration Harvest Permit;
- (6) Depuration Facility Construction Permit
- (7) Aquaculture Facility Construction Permit;
- (8) Aquaculture Facility Operating Permit
- (9) Certified Shipper Certificate - One Certified Shipper certification will be issued to the following type facilities for each location.

- (a) Shucker-Packer;
- (b) Repacker;
- (c) Shellstock Shipper;
- (d) Reshipper ;
- (e) Depuration Processor.

Replace section G.1(e) to read:

(e) Only persons who comply with the requirements of this Regulation shall be entitled to receive and retain a permit or certificate.

Add new section G.1(g) to read:

(g) Nothing in this regulation shall be construed to prevent the intrastate distribution or sale of non adulterated shellfish products by persons not permitted or certified by the Department, provided, however, that these persons may not distribute or sell shellfish products to Certified Shippers.

Replace section G.2 to read::

2. Issuance of Permits and Certificates:

(a) An application shall be made on a form provided by the Department.

(b) Upon receipt of a completed application form, the Department shall make comprehensive onsite inspections of the shellfish operation as may be necessary to determine compliance with the applicable provisions of this Regulation. This inspection shall be conducted within the 120 day period immediately prior to the issuance or renewal of the certification.

(c) Prior to application approval, persons requesting certification as Certified Shippers shall conduct a facility and product specific hazard analysis. The applicant must also have a HACCP plan in addition to a program of sanitation monitoring, verification and record keeping that complies with the *Code of Federal Regulations, Title 21, Part 110 (21CFR110) and Part 123 (21CFR123)*, revised as of April 1, 1997.

(d) A permit or certificate may be suspended or revoked as stated in Items H.1(b) and H.1(d).

Replace section H.1(b) to read:

(b) Suspension of Permits or Certifications - If the Department has evidence that an operator of a shellfish activity or facility has created or is responsible for conditions that may cause shellfish to become adulterated, the permit or certificate may be suspended or revoked upon notice to the permit or certificate holder.

Replace section H.1(d) to read:

(d) Revocation of Permits or Certifications - Serious or repeated violations of any of the requirements of this Regulation, failure to cooperate, or interference with Department personnel in the performance of their duties shall be cause for a permit or certificate to be revoked. Prior to such action, the Department shall issue notice, in writing, stating the reasons for which the permit or certificate is being revoked. This notice shall also advise that the revocation determination shall be final unless a request for a hearing is filed with the Department within fifteen (15) business days of receipt of the notice. The request for a hearing shall be processed in accordance with the Administrative Procedures Act.

Replace section I.1. Introductory and I.1(a) to read:

1. General Sanitation and Controls For Certified Shippers

(a) HACCP Requirement - Certified Shippers shall comply with all applicable sections of 21CFR110 and 21CFR123.

Replace section I.1(c)(1) to read:

(1) Certified Shipper facilities shall have non-mobile mechanically refrigerated storage rooms capable of maintaining all unfrozen shellfish at a temperature between thirty-four and forty-five degrees Fahrenheit (one and seven degrees centigrade).

Replace section I.1(c)(10) to read:

(10) Frozen shellfish shall be maintained at or below a temperature of zero degrees Fahrenheit (minus eighteen degrees centigrade) at all times.

Replace section I.1(f) to read:

(f) Restroom Facilities - Each Certified Shipper shall provide employees with properly installed and conveniently located toilet facilities in numbers as required in Section 1910.141, South Carolina Occupational Safety and Health Standards for General Industry, South Carolina Department of Labor. The doors of all restrooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles with covers shall be provided.

Replace section I.1(g) to read:

(g) Hand-Washing Facilities - Each Certified Shipper facility shall have an adequate number of conveniently located hand-washing facilities for its employees. This shall include a lavatory or lavatories equipped with hot and

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cold or tempered running water, hand-cleaning soap or detergent and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair. Signs shall be posted in toilet rooms and near lavatories directing all employees to wash their hands before returning to work.

Replace section I.1(j) to read:

(j) Vector Control - Certified Shipper facilities shall be constructed to exclude and control insects, rodents, vermin, and other animals. Outside doors shall be self-closing, tight fitting, and outward opening. Doors between shucking and packing rooms shall be self-closing, and open into the shucking room only.

Replace section I.1(k) to read:

(k) Ice - When used for processing or storage of shellfish shall be produced from a Department approved water source and shall be stored and handled under conditions which prevent contamination.

Replace section I.1(l) and I.1(l)(1); add sections I.1(l)(2), (3) and (4) to read:

(l) Product Recall - All Certified Shippers shall:

(1) adopt and maintain on the premises procedures for conducting recalls of shellfish suspected of being adulterated;

(2) immediately notify the Department of all information including, but not limited to, product identity, deficiency, and extent of distribution regarding shellfish suspected of being adulterated;

(3) immediately institute shellfish recall procedures for shellfish suspected of being adulterated;

(4) fully cooperate with all Departmental investigations.

Replace section J.2(g) introductory paragraph; subitems J.2(g)(1)-(7) remain the same:

(g) Records - Complete, accurate, and legible daily records shall be maintained on the facility premises in a bound ledger book or computer file, in a format approved by the Department. Records shall be readily available when requested for inspection for a period of one year for shellstock or shucked shellfish, and for a period of two years for frozen shucked shellfish and shall contain the following information;

Replace section J.2(h) to read:

(h) Shipping Documents files are to be completed daily, kept with facility records, and readily available to the Department when requested.

Replace section J.3(e) to read:

(e) Time Requirements - Shellstock subjected to the heat shock process shall be immersed in the shock water in accordance with the criteria specified in J.3(a). An accurate timing device shall be available and used to determine the immersion time.

Replace section K.1 in its entirety to read:

1. If shucked shellfish are repacked, the operation shall be conducted strictly in accordance with the requirements stipulated for shucking and packing facilities in Section J., except those relating specifically to shucking.

Replace section K.6 introductory paragraph; subitems K.6(a) through (f) remain the same:

6. Complete, accurate, and legible daily records shall be maintained on the facility premises in a bound ledger book or computer file, in a format approved by the Department. Records shall be readily available when requested for inspection for a period of one year for shellstock or shucked shellfish, and for a period of two years for frozen shucked shellfish and shall contain the following information;

Replace section K.7 to read:

7. Shipping Documents files are to be completed daily, kept with facility records, and readily available to the Department when requested.

Replace section L.3 introductory paragraph; subitems L.3(a) through (e) remain the same.

3. Records - Complete, accurate, and legible daily records shall be maintained on the facility premises in a bound ledger book or computer file, in a format approved by the Department. Records shall be readily available when requested for inspection for a period of one year for shellstock or shucked shellfish, and for a period of two years for frozen shucked shellfish and shall contain the following information;

Replace section L.3(f) to read:

(f) Shipping Documents files are to be completed daily, kept with facility records, and readily available to the Department when requested.

Replace section M.3(a); subitems M.3(a)(1)-(6) remain the same:

3. Records

(a) Complete, accurate, and legible daily records shall be maintained on the facility premises in a bound ledger book or computer file, in a format approved by the Department. Records shall be readily available when requested for inspection for a period of one year for shellstock or shucked shellfish, and for a period of two years for frozen shucked shellfish and shall contain the following information;

(1) The quantity of shellfish;

(2) Type of shellfish;

(3) For shellstock, the original shipper's certification number including the State abbreviation, and the certification number of the shipper from whom the shellfish were obtained. For shucked shellfish, the certification number of the shipper from whom the shellfish were obtained as well as the certification number of the original Shucker-Packer or Repacker;

(4) For shellstock, the date the shellstock were obtained as well as the date harvested, for shucked shellfish, the date the shellfish were obtained as well as the applicable shucked date or sell by date;

(5) For shellstock, the harvest area;

(6) Name and address of each person to whom shellfish are sold, given or otherwise transferred along with the date of each transaction.

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Replace section M.3(b) to read:

(b) Shipping Documents files are to be completed daily, kept with facility records, and readily available to the Department when requested.

Replace sections N.1(a), (b) and (c) to read:

1. General Administration

(a) Permitting Requirement - A Permit for facility construction shall be obtained from the Department prior to constructing any deputation facility. A scheduled deputation process (SDP) which addresses all aspects of the proposed operation shall be provided in conjunction with the Deputation Facility Construction Permit application.

(b) Plan Review - Plans for construction or remodeling of deputation facilities which evidence compliance with all applicable portions of section N.2 shall be reviewed and approved by the Department prior to construction.

(c) Supervision - Deputation activities shall be supervised by the Department to prevent polluted shellfish from being diverted into the marketplace prior to purification. Shellfish purified by deputation shall remain at the facility and shall not be utilized in any way until approved by the Department.

Replace section N.2(a) to read:

(a). The facility shall be designed to physically separate undeputed shellstock from deputed shellstock and shall be approved by the Department.

Replace section N.3(a)(1) to read:

(1) Harvesting activities shall conform to the applicable portions of Sections C and G of this Regulation.

Replace sections N.3(b) and (c) to read:

(b) Source - Shellfish intended for deputation shall be harvested from growing areas meeting the water quality criteria for Approved, Conditionally Approved, Restricted, or Conditionally Restricted areas.

(c) Pre-Deputation Identification - Shellfish destined for deputation facilities shall be identified in accordance with Section C.

Replace section N.3(f)(1) to read:

(1) Deputed shellfish shall be identified in accordance with Section C., and the tag shall be stamped with the word "deputed" or DEP.

Replace section N.3(h) to read:

(h) Transportation of Deputed Shellfish - Deputed shellfish shall be transported in accordance with Section C.

Replace sections O.1(b)(1) and (2) with sections O.1(b)(1) through (3) to read:

(1) An Aquaculture Facility Construction Permit based upon criteria described in the facility's approved operational plan as required by Section O.4(a); and

(2) An Aquaculture Operating Permit based upon successfully meeting the requirements of all applicable portions of this Regulation; and

(3) Certification as a processor, unless the permitted aquaculturist provides the Department with prior notice that harvested shellfish are to be delivered to a Shucker-Packer(SP), Repacker(RP), Shellstock Shipper(SS), or Depuration Processor(DP) within the State.

Add new sections O.1(c) and O.1(c)(1) and (2). Existing sections O.1(c), (d), (e), (f), (g), (h), (i) and (j) are renumbered to O.1(d) through (O.1(k):

(c) Any person operating an open water aquaculture facility which grows or produces molluscan shellfish for sale shall obtain the following from the Department prior to commencing operations or harvesting shellfish for human consumption:

(1) An Aquaculture Operating Permit based upon successfully meeting the requirements of all applicable portions of this Regulation; and

(2) Certification as a processor, unless the permitted aquaculturist provides the Department with prior notice that harvested shellfish are to be delivered to a Shucker-Packer(SP), Repacker(RP), Shellstock Shipper (SS), or Depuration Processor (DP) within the State.

Replace text of section O.5 introductory paragraph; subitems O.5(1), (2) and (3) are renumbered to O.5(a), (b) and (c) and text is unchanged.

5. Aquaculture Permit Applicants engaging in Polyculture activities shall include in its operational plan requirements to:

(a) Provide information concerning all sources and species of all organisms to be cultivated, cultured, and harvested;

(b) Monitor for human pathogens, unacceptable levels of animal drugs, and other poisonous or deleterious substances that might be associated with polyculture activities; and

(c) Subject all harvested shellstock to relaying or depuration:

Fiscal Impact Statement:

The Department estimates that implementation of the proposed amendments to R.61-47 will result in minimal administrative cost being incurred by the state or its political subdivisions. Any administrative costs will be absorbed by current funds of the Shellfish Sanitation Program.

Statement of Need and Reasonableness:

The Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION:

R.61-47 establishes requirements necessary to protect the public health of consumers by assuring the sale and distribution of shellfish from safe sources and insures that shellfish have not been adulterated during harvesting, processing, shipping, or handling. R 61-47 implements the requirements of the Interstate Shellfish Sanitation Program (ISSP), as administered by the U.S. Food and Drug Administration (FDA). Compliance with this criteria

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is necessary in order to maintain approval for the shipment of South Carolina Shellfish products in interstate commerce.

Purpose of Amendment: This amendment of the current regulation is necessary to address changes in NSSP (*National Shellfish Sanitation Program*) criteria, to clarify certification requirements for commercial activity, and to incorporate the regulatory requirements of Hazard Analysis Critical Control Points (HACCP). Modifications will assist staff in implementation of current, reasonable, and consistent controls relating to the public health aspects of the harvesting, processing, and distribution of molluscan shellfish. Modifications to the regulation should pose no additional cost burden to the molluscan shellfish industry, consumers of molluscan shellfish, or the state. This amendment updates R.61-47 since it was last amended on February 28, 1997.

Legal Authority: While this regulation is not required by federal statute, it is required for the state's shellfish industry to be able to engage in interstate commerce. This regulation is authorized by Section 44-1-140 of the 1976 South Carolina Code of Laws, as amended.

Plan for Implementation: The existing regulation is currently implemented at the state level which is appropriate to provide consistency within the state and to effectively address interstate issues or problems. The proposed amendments will make changes to and be incorporated into R.61-47 upon approval of the General Assembly and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulation is implemented.

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

In 1984 the U.S. Food and Drug Administration and the Interstate Shellfish Sanitation Conference (ISSC) entered into an Memorandum of Understanding (MOU) recognizing ISSC as the primary national organization of State shellfish regulatory officials that provides guidance and counsel on matters for sanitary control of shellfish produced for human consumption. Resulting in formal procedures for state representatives, following FDA concurrence, guidelines are published in revision of NSSP (National Shellfish Sanitation Conference) Model Ordinance. The National Shellfish Sanitation Conference completed the Revised 1997 "Guide for The Control of Molluscan Shellfish" of which this agency, in maintaining compliance, has incorporated excerpts (primarily HACCP) into this amendment.

Other changes to the regulation include new definitions and modification of language for clarity. This will aid readers governed by these regulations to better understand the requirements therein.

DETERMINATION OF COST AND BENEFITS: Since the Regulation is only being amended to implement the proposed HACCP requirements and to be more specific in its intent, there will be minimal cost to the state, its political subdivisions, and to the regulated community. This regulation provides the Department the ability to regulate the harvesting, handling, and processing of shellfish in order to protect public health. Nonregulatory solutions could not provide this ability and could result in serious public health risks.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: Shellfish present a significant health risk if not appropriately controlled. Shellfish are unique in that they are "filter feeders" and can accumulate pathogenic substances within their bodies that pose a health risk when eaten raw or partially cooked. This regulation will have a positive effect on public health through the continued implementation of controls on molluscan shellfish production, processing, and distribution.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will not be an adverse effect on the environment if the amendments are not

implemented at this time. However, there will be an adverse effect on the Department’s ability to protect public health by not maintaining compliance with federal regulation and guidance pertaining to the certification and permitting of molluscan shellfish producers, processors, and shippers.

Document No. 2431

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Sections 13-7-10, 13-7-40 and 13-7-45 et seq. and Supplement

R.61-106, Tanning Facilities

Synopsis:

Amendment of R.61-106 will incorporate the directive of the Board of Health and Environmental Control to require tanning facility registrants to post the results of the Department’s most recent regulatory inspection, add and revise definitions, delete requirements duplicated in other areas of the regulations, clarify and strengthen existing requirements, add new requirements that will promote greater health and safety to the public, delete requirements that are no longer applicable, reasonable or necessary, and make stylistic and grammatical changes. Specific areas the Department addresses in the regulations include: reorganization of the civil penalty schedule into a matrix system; addition of more specific requirements for the formal training of tanning equipment operators; provide for alternative exposure schedules; and, require the installation of remote, override timers. See Discussion of Proposed Revisions below and Statement of Need and Reasonableness herein.

Discussion of Revisions:

(1) Add new definitions to further clarify existing requirements.

<u>SECTION</u>	<u>REVISION</u>
61-106.1.2	Five new definitions are added in alphabetical/numerical order. Definitions are added for “Formal Training,” “Personal Use,” “Sanitize,” “Tanning Components,” and “Unlimited.” These changes were made for further clarification.

(2) Add new definitions to incorporate new requirements.

<u>SECTION</u>	<u>REVISION</u>
61-106.1.2	One new definition is added in alphabetical/numerical order. A definition is added for “Override Timer Control.” This change was made due to the new requirement for remote override timers.

(3) Revise existing definitions to further clarify existing requirements.

<u>SECTION</u>	<u>REVISION</u>
61-106.1.2	Two definitions are revised to include greater detail and descriptions. The revised definitions are “Operator” and “Vendor.” These changes were made for further clarification.

(4) Delete requirements that are duplicated in other areas of the regulation.

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<u>SECTION</u>	<u>REVISION</u>
61-106.1.4.2	Delete this section because it is identical to Section 1.9.
61-106.4.2.3	Delete this section because it is identical to Section 4.2.1.
61-106.4.6.2	Delete this section because it is identical in intent to Section 4.6.1.
61-106.5.4.8	Delete the duplicate reference to Appendix A from item 7.
61-106.6.4	Delete this section because it is moved to Section 6.2.

(5) Clarify and strengthen existing requirements.

<u>SECTION</u>	<u>REVISION</u>
61-106.1.4.2	Revise to change “reasonable notice” to “one day’s notice” for inspection notification. This change was added for further clarification.
61-106.1.5.2	Revised to add “other than tanning equipment” to further clarify the exemption.
61-106.1.7.1	Revised to specify notification of planned corrections is to be submitted to the Department in writing.
61-106.1.7.2	Revised to specify notification of completed corrective action is to be submitted to the Department in writing.
61-106.1.8	Revised and rearranged to avoid any confusion regarding the enforcement action process.
61-106.1.8.1.1	Revised to change “Send a letter of” to “Provide written notification” for further clarification. Revised to delete “accomplishes the following.”
61-106.1.8.1.1.3	Revised to change “Requests” to “Requires submission of” for further clarification.
61-106.1.8.1.1.4	Revised to add that the Department will approve a registrant’s corrective action plan and proposed time schedule for its completion.
61-106.1.8.1.2	Revised to change “notification letter sent” to “written notification sent.” Revised to add the Department will seek “further enforcement action.” Revised to change “appropriate penalties and direct remedial relief” to “and/or.”
61-106.1.8.1.3	Revised to change “In cases where voluntary action by the registrant is not forthcoming” to “If the registrant fails to comply with the requirements of the certified letter within ten days” for further clarification.
61-106.1.8.1.3.1	Revised to move “issue an administrative order” from Section 1.8.2 for further clarification.
61-106.1.8.1.3.1.2	Revised to add “Requires corrective action; or” for further clarification and strengthening.
61-106.1.8.1.3.1.3	Revised to refer to the “facility’s” registration and to add “in accordance with Section 2.8” for further clarification.

- 61-106.1.8.1.3.3 Revised to add “other” enforcement action.
- 61-106.1.8.2 Revised to change “Severity Level I” to “Major severity level” to be consistent with the changes in Section 1.13.4. Revised to change “issue an administrative order” to “immediately impound or order the impounding of sources of ultraviolet radiation in accordance with the Act.” This change was made for further clarification.
- 61-106.1.10 Revised to add the inclusion of tanning equipment components. This change is being made to ensure registrants keeps records of the purchase of components, particularly replacement lamps. Revised to specify maintaining records for “no less than two years” instead of “until disposal is authorized by the Department.” This change was made for further clarification. Revised to require registrants to have the records readily available for Department review.
- 61-106.1.11.2.2 Revised to change “initial application” to “initial registration approval.” This change was made to reflect that tanning equipment fees are not due upon the receipt of an application, but upon its approval.
- 61-106.1.11.4 Revised to change September 1 to September 15 in order to give registrants additional time to pay their fees. This is consistent with the time limits in other areas of the Electronic Products Section. Revised to add “Section.”
- 61-106.1.11.6 Revised to include payment of the prorated fees that are due on a monthly basis.
- 61-106.1.11.8 Revised to clarify penalties and revocation for failure to pay prorated tanning equipment fees. Action for failure to pay fees is specified in Section 1.11.5, but the Department felt separate emphasis was needed for prorated fees.
- 61-106.1.13.2 Revised to change “Severity Levels I, II, III” to “Major, Moderate, Minor,” respectively. Revised to add “or which represent a “significant, moderate, or minor” deviation, respectively, from the requirements of this regulation. These changes were made for further clarification and strengthening of existing requirements.
- 61-106.1.13.4.1 Revised to include the addition of the civil penalty matrix. This change was made for further clarification regarding the civil penalty amounts that may be imposed and includes the calculation of the base penalty and specifies circumstances that could result in increased penalties. The matrix is significantly more defined as compared to the current Section 1.13.5.
- 61-106.1.13.4.2,
61-106.1.13.4.3,
61-106.1.13.4.4 Revised to delete “routine” and “a prior thirty-six month period or,” as applicable.
- 61-106.1.13.4.2 Revised to specifically define the circumstances upon which a civil penalty up to Twenty-five Thousand Dollars could be levied. This change was made to make registrants well aware of violations that could lead to the issuance of these civil penalties.
- 61-106.1.13.4.3 Revised to indicate examples of violations with “Potential for Harm” according to Major, Moderate and Minor violations. This revision was made to be consistent with the civil penalty matrix and to be very specific regarding the violations that could lead to the issuance of civil penalties. This section replaces the current applicable portion of Section 1.13.5, which has Severity Levels I, II, III subdivided according to these

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categories: Administration, Equipment Operations and Operators, and Tanning Equipment.

61-106.1.13.4.3 Revised to change references from R.61-106.3.6.3 to R.61-106.3.6.5 and R.61-106.3.6.5 to R.61-106.3.6.6 for further clarification.

61-106.1.13.4.4 Revised to indicate examples of violations with “Deviation from the Requirement” according to Major, Moderate and Minor violations. This revision was made to be consistent with the civil penalty matrix and to be very specific regarding the violations that could lead to the issuance of civil penalties. This section replaces the current applicable portion of Section 1.13.5, which has Severity Levels I, II, III subdivided according to these categories: Administration, Equipment Operations and Operators, and Tanning Equipment.

61-106.1.13.4.4 Revised second paragraph under “minor” to add “tanning.”

61-106.1.13.4.4 Revised third paragraph under “minor” to be consistent with R.61-106.6.9.1 by changing “within thirty days” to “by the tenth of each month.”

61-106.2.2.2 Revised to further clarify application submission and approval requirements.

61-106.2.2.3 Revised to require submission of supporting information with the DHEC 0826, Application for Registration form. This has always been done, but this revision was added for further clarification.

61-106.2.2.3.4 Revised to refer to Section 2.3 regarding the operating procedures. This change was made for further clarification.

61-106.2.2.3.6 Revised to require an applicant to submit a copy of a formal training certificate for each operator or proof of successful completion of a formal training class or approved temporary training. This has always been done, but this revision was added for further clarification.

61-106.2.3.2 Revised to make the requirements for submission and content of procedures a separate section. Revised to specify items under “1) Instructions to the consumer.” Revised under 4) to include the allowance of an approved alternate exposure schedule. Revised under 5) to add quarterly testing of tanning equipment. Revised to add “9) use of potentially photosensitizing medications and substances.” Revised to add “10) training requirements.” Revised to add “11) requirements of R.61-106.”

61-106.2.4.1 Revised to change “certificate of registration” to “registration approval document.” The Department has always issued a letter of approval, not a certificate. However, the proposed wording will allow for a certificate to be issued, if needed.

61-106.2.4.3 Revised to change “certificate of registration” to “registration approval document” and clarify that the facility must receive notification from the Department of an approval to operate. The notification text was added to reflect the Department’s current policy of calling facilities upon request regarding registration approval. This will allow the facilities to begin operation much quicker than if they had to delay opening until a document was received from the Department.

- 61-106.2.6.1 Revised to give registrants thirty days to notify the Department of changes. The current requirement for prior notification is not feasible or reasonable in most cases. Revised to change “certificate of registration” to “registration approval document.”
- 61-106.2.6.2 Revised to indicate changes involving the addition or deletion of tanning equipment operators do not have to be reported to the Department. This revision will eliminate the burden by the facilities for reporting these events.
- 61-106.2.7 Revised to add “and posting” of prohibited advertisement. This was added for further clarification.
- 61-106.2.7.1 Revised to add “or posting” of prohibited advertisement. This was added for further clarification.
- 61-106.2.7.2 Revised to include prohibited postings along with prohibited advertisements, and to further clarify by listing examples of what is currently interpreted as advertisement of “safe” tanning. This text was added to avoid confusion regarding the Department’s interpretation of “safe.”
- 61-106.2.7.3 Revised to add prohibited posting and to clearly indicate registrants cannot claim medical or health benefits from tanning equipment. This was added to further expand the current text prohibiting registrants from implying use of a tanning device as a medical device or treatment.
- 61-106.2.8.1 Revised to change “deny, suspend or revoke a certificate of registration applied for or issued” to “deny an application or suspend or revoke a registration approval document issued.” This was changed for further clarification.
- 61-106.3.3.1 Revised to add more specific wording to the consumer warning and change some wording. These changes were made to strengthen the consumer warning. Change “overexposure” to “too frequent or lengthy exposure.” Change “overexposure can cause eye and skin injury...” to “exposure can cause serious skin injury...” Change “Repeated exposure may cause premature aging of the skin and skin cancer” to “Repeated exposure may cause chronic sun damage characterized by wrinkling, dryness, fragility and bruising of the skin and skin cancer.” Capitalize and bold “Wear protective eyewear.” Add “in accordance with the manufacturer’s instructions” after “Failure to use protective eyewear.” Add “Ultraviolet radiation from sunlamps will aggravate the effects of the sun. Do not sunbathe before or after exposure to ultraviolet radiation.” Add “certain foods or toiletries.” Add a list of medications “(including, but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medicine, birth control pills and skin creams).” Add “Pregnant women or women who are using birth control pills who use this product may develop discolored skin.” Revised to move height requirements from what was formerly Section 3.3.2.
- 61-106.3.4 Revised to add “facility” to equipment and instruction requirements. This change was made for further clarification.
- 61-106.3.4.4 Revised to change timer interval requirements from “numerically indicated” to “indicated in such a manner that is consistent with the exposure times on the manufacturer’s recommended exposure schedule or the Department approved alternate exposure schedule.” The change was made to provide further clarification and is consistent with the current interpretation of the regulation and also ensures adequate indications if a registrant chooses to implement an alternate exposure schedule.

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- 61-106.3.4.9 Revised to add a reference to 61-106 Section 3.4.3 and to specify the date of the test, the indicated time versus measured time on the timer tests and to require the timer tests to be performed at the tanning equipment manufacturer's maximum exposure time. This change was made to provide further clarification and is consistent with the Department's current interpretation of the regulation.
- 61-106.3.5.1.1 Revised to clarify other means for booths to ensure compliance with the Federal Regulations, 21 CFR 1040.20. Revised to delete requirements for handrails and change "proper exposure distance" to "manufacturer's recommended exposure position or minimum use distance" for further clarification. The deletion was made because booths designed today do not have handrails because they do not add increased safety to the product.
- 61-106.3.5.1.3 Revised to change "non-latching" to "non-locking." This change was made because doors to the booths should not lock for safety purposes, but should latch.
- 61-106.3.5.1.4 Revised to require the floors of booths to be kept clean. Revise to change "non-slip floors" to "maintained in a non-slip manner" for further clarification. Revised to delete the requirements for handrails.
- 61-106.3.6.3 Revised to add "prior to initial exposure" the operator needs to additionally instruct the consumer in how to use protective eyewear "in accordance with the manufacturer's design, instructions and approval." This change was made to put additional responsibility upon the consumer to have compliant protective eyewear.
- 61-106.3.7.1 Revised to add that the protective eyewear that is to be sanitized is the eyewear provided by the registrant. Revised to change the "sanitizer recommended by the eyewear manufacturer" to "intended and documented for use on protective eyewear" and change "or" to "and" to include the sanitizer being approved by the U.S. Environmental Protection Agency and the Department. Revised to add "The sanitizer shall be mixed and used according to the manufacturer's instructions." This change was made for further clarification.
- 61-106.3.7.2 Revised to change "operator" to "salon employee." Revised to indicate the tanning equipment shall be properly sanitized. Revised to change the "sanitizer recommended by the tanning equipment manufacturer" to "intended and documented for use on tanning equipment" and change "or" to "and" to include the sanitizer being approved by the U.S. Environmental Protection Agency and the Department. Revised to add that areas such as handrails and headrests and bed surfaces must be sanitized. The Department has always enforced sanitizing these areas, but felt specifically listing the areas to be sanitized would make the requirement more clear. Revised to add "The sanitizer shall be mixed and used according to the manufacturer's instructions." This change was made for further clarification.
- 61-106.3.7.4 Revised to change "clean" to "sanitize" and "recleaning" to "resanitizing" for further clarification.
- 61-106.3.8 This Section was formally Section 4.6.1 and was moved to a Part that was more applicable. Revised to specify the format for an equivalency document. This was added because repeated attempts have been made by registrants and vendors to use noncompliant equivalency documents. Strengthening of this regulation will also reduce confusion regarding what is compliant.

- 61-106.3.8.2 Revised to further clarify the retention of equivalency documents for lamps currently in use and to require the documents to be readily available for Department review. The documents are currently required to be kept, but the requirements needs to be strengthened to have them available.
- 61-106.3.8.3 Revised to delete “burned out.” This change was made because burned out lamps do not present a hazard that would require the use of the tanning equipment to be discontinued until replacement.
- 61-106.4.2.1 Revised to add the consumer warning must be dated in addition to being signed. Revised to specify that a tanning equipment operator shall require the consumer to complete a detailed medical and skin history. This requirement is vaguely mentioned in the application requirements (Section 2.2.3), but was added to strengthen the existing requirements. Revised to add that the documents must be signed on a consumer’s initial visit, and must be renewed at least annually thereafter or maintained continually throughout the consumer’s patronage of the facility. This change will further clarify and strengthen record- keeping requirements, but add flexibility to how a registrant chooses to keep their records.
- 61-106.4.2.3 Revised to add that a registrant must have a list of potential photosensitizing agents readily available for review. When inspections are performed, the Department is currently ensuring the list is available, and the addition of this requirement will further strengthen what is already being done. Revised to move “to the best of his or her ability” for further clarification.
- 61-106.4.2.4 Revised to add the requirement that documentation of skin problems must be done in writing. The Department has always made this recommendation, but felt requiring the documentation was necessary.
- 61-106.4.3.3 Revised to add the recording of the room number or name for each visit and each consumer’s skin type. This is currently being required according to the Department’s interpretation of Section 4.3.2, or recording of the room number is recommended if the facility has all identical equipment. This was added to further strengthen and clarify the regulations.
- 61-16.4.4.1 Revised to require the reporting of any tanning equipment injuries, in addition to ultraviolet radiation injuries. The Department has had several reports of injuries due to mechanical failures, and the Department feels the additional reporting of these injuries are useful, particularly if there is a defect in the same model of tanning devices. Revised to change “occurrences or notice” to “notification” for further clarification. Revised to add “The consumer that is injured or allegedly injured must report the injury within seventy-two (72) hours of the occurrence.” This was added to ensure and encourage prompt notification of factual injuries.
- 61-106.4.4.2 Revised to recognize the fact that not all information pertaining to actual or alleged injuries may be available to the registrant. Revised to obtain further information regarding actual or alleged injuries. The Department is currently requesting this information and requiring it to be submitted will further strengthen the regulations.
- 61-106.4.6 Revised to specify what users’ manuals have to be available and strengthen the requirement to have them readily available for Department review.

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- 61-106.5.3.1 Revised to indicate required adherence to the maximum exposure time in minutes and to add “or the Department approved alternate maximum exposure time in minutes.” Revised to delete the requirement for adhering to the determined duration of exposure and appropriate spacing of sequential exposures. This requirement was deleted due to a compromise reached during October and November, 1998, with the S.C. Tanning Association and other members of a working group formed to further study the regulation revision. This change will allow for operator discretion in determining adherence to the manufacturer’s recommended exposure schedule. However, in turn, consumer warning requirements have been strengthened and require an oral review by the operator, the wording of the warning statement has been made more detailed, a new requirement has been proposed for consumer reporting of injuries to the Department (Section 3.3.2), and operator training requirements have been strengthened.
- 61-106.5.3.6 Revised to add “or area with the tanning equipment.” This was added for further clarification.
- 61-106.5.4 Revised to add or clarify several items of training for a tanning equipment operator. This was added to strengthen the training requirements and reflects items currently included in the formal training classes. Revised to add a reference to the alternate exposure schedule.
- 61-106.5.8 Revised to require the training records to be readily available for review by the Department.
- 61-106.6.0 Revised to change “Tanning Equipment Installation, Servicing and Services” to “Vendors.” This change was made to include providers of tanning equipment operator formal training and group all of the providers into one category.
- 61-106.6.1 Revised to state the requirements apply to persons providing formal training of tanning equipment operators.
- 61-106.6.2 Revised to add formal training vendors and to delete “within thirty days following the effective date of these regulations.” Revised to add a definition of services taken from another section (formerly Section 6.4).
- 61-106.6.8.1 Revised to change “deny, suspend or revoke a certificate of registration applied for or issued” to “deny an application or suspend or revoke a registration approval document issued.” This change was made for further clarification.
- 61-106.6.9.1 Revised to add “recertified, upgrades” and to change “within thirty days of” to “not later than the tenth day of.” This change is consistent with the Department’s policy of one report being submitted once per month as opposed to a notification being submitted for each sale or installation of tanning equipment.
- 61-106.6.9.1.1 Revised to add “telephone number” of persons receiving tanning equipment and change to reflect tanning equipment that has been recertified or upgraded. This change was made because tanning equipment was not recertified or upgraded prior to the implementation of the original regulations, but these procedures are now being performed.
- 61-106.6.9.1.2 Revised to add tanning equipment that has been recertified or upgraded.
- 61-106.6.9.1.3 Revised to add tanning equipment that has been recertified or upgraded.

61-106.6.9.3 Revised to add tanning equipment that has been recertified or upgraded.

(6) Add new requirements.

SECTION

REVISION

61-106.1.14 Text was added to require the posting of inspection results. This requirement was added as directed by the Board.

61-106.1.15 Text was added to include a violation for making a material false statement regarding application, inspection or other information required by the regulations. Making a material false statement is currently grounds to deny, suspend or revoke registration, but making this a violation was added for clarification.

61-106.1.16 Text was added to include a provision for severability. This requirement was added as required.

61-106.2.2.3.3 Text was added to require the applicant to submit a sample or description of consumer records to be kept. The Department currently requests a sample of consumer records to be submitted with the application. This requirement will ensure consumers' medical and skin histories are being recorded in sufficient detail.

61-106.2.2.3.5 Text was added to require the applicant to submit a copy of each manufacturer's recommended exposure schedule and the recommended lamps for each model of tanning device. This requirement will help ensure a facility has compliant tanning equipment prior to consumer use.

61-106.2.3.1 Text was added to further clarify establishment, submission, review and approval of a registrant's operating procedures. Text was added to further clarify adherence to and approval of the operating procedures and to submit procedure changes to the Department in writing.

61-106.2.3.2.4 Further clarify this new requirement by changing item 4 to state "adherence to the manufacturer's recommended exposure schedule, or an approved alternate exposure schedule, or the procedures used for determining to allow a consumer to exceed the schedule as described in Section 2.3.4, including determining exposure times, frequency of visits, spacing of visits and maximum exposure time(s) in minutes." "Or use of an approved alternate exposure schedule" will be deleted because it is a duplicate.

61-106.2.3.3 Text was added to allow the registrant to submit an alternate exposure schedule in addition to the tanning equipment manufacturer's recommended exposure schedule. This addition will allow the registrant to adjust the consumer's exposure time due to decrease in the emitted ultraviolet radiation from a tanning device due to the aging of the lamps.

61-106.2.3.4 Text was added for the registrant to allow a consumer to exceed the manufacturer's recommended exposure schedule with certain provisions. This requirement was added due to a compromise reached during October and November, 1998, with the S.C. Tanning Association and other members of a working group formed to further study the regulation revision. This change will allow for operator discretion in determining adherence to the manufacturer's recommended exposure schedule. However, in turn, consumer warning requirements have been strengthened and require an

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oral review by the operator, the wording of the warning statement has been made more detailed, a new requirement has been proposed for consumer reporting of injuries to the Department (Section 3.3.2), and operator training requirements have been strengthened.

61-106.2.3.4 Further clarify this new requirement by shading areas to be completed by consumers wanting to exceed the recommended exposure schedule.

61-106.2.3.4 Further clarify item 9 of this new requirement by changing “pigmentation” to “darkening” and “are evident” to “beginning to show.”

61-106.2.4.4 Text was added to further emphasize that a tanning facility found operating unregistered must cease operation until approval by the Department is issued. Operation without registration is currently prohibited by 61-106 Section 2.4.3, but the Department feels a separate text is needed for clarity.

61-106.2.7.4 Text was added to prohibit the advertisement of tanning packages labeled as “unlimited.” This addition is being made to prevent registrants from advertising that tanning in excess of the tanning equipment manufacturer’s recommended exposure schedule is allowed.

61-106.2.7.5 Text was added to prohibit the advertisement or posting of tanning packages that allow customers to tan in excess of the tanning equipment manufacturer’s recommended exposure schedule or the Department approved alternate exposure schedule.

61-106.2.8.1.2 Text was added to give the Department authority to deny an application for falsification or alteration of records. This was added to further strengthen the regulations.

61-106.2.8.1.9 Text was added to give the Department authority to deny an application when the owner of multiple salons has outstanding compliance issues, a poor compliance history, outstanding fees and penalties due, unresolved enforcement action or a Major severity level violation. This addition is being made to prevent registrants that willfully fail to comply with the regulations from continuing to open more salons with a willful intent to violate the regulations.

61-106.3.3.2 Text was added to include an injury warning: “If you receive any injury, such as a burn or other physical injury, from the use of this tanning device, you should report this injury immediately, within twenty-four (24) hours, to the SC Department of Health and Environmental Control, Radiological Health Branch, 2600 Bull Street, Columbia, SC 29201, or contact the Department by telephone at (803)737-7400.” This addition is being made to coincide with the new Section 2.3.4 and changes in Section 5.3.1.

61-106.3.3.2 Revised to add reporting of injuries to a tanning equipment operator in addition to the Department.

61-106.3.3.2 Revised to change capital letters to lower case letters to reserve space and make the text easier to read.

61-106.3.4.3.1-
61-106.3.4.3.5 Text was added to require the installation of remote override timers. This text was added because currently facilities with only one to three tanning devices have been allowed to have timers on the device to be set by the operator or set by the consumer as instructed by the operator and use a kitchen-type timer set by the operator. Department inspections have revealed that kitchen timers are not being used by operators and in most

cases when the timer on the tanning equipment is set, the ultraviolet lamps are energized when the customer is not wearing protective eyewear. This system also allows for the customer to easily reset the time for longer than indicated by the manufacturer's recommended exposure schedule and allows for potential serious overexposure, and gives the consumer responsibility for what is an operator function. Text was also added to give registrants one year from the effective date of the regulations to comply. The Department feels this is a reasonable time period for compliance.

61-106.3.4.10

Text was added to ensure timers and emergency off switches are tested for accuracy and function prior to allowing customers to tan. The current regulation only allows for quarterly testing. The additional testing prior to consumer use will further prevent potential overexposure to consumers. Text was added to specify the date of the test, to require the timer test to include the indicated time versus the measured time and to conduct the timer test at the tanning equipment manufacturer's recommended maximum exposure time.

61-106.3.4.11

Text was added to ensure tanning equipment presents no mechanical safety hazards to consumers. For example, during many Department inspections, the top canopies of tanning beds will not stay raised. This presents a significant safety hazard to consumers. Safety violations of this nature are currently being cited under 61-106 Section 1.6. Specific text was added in order to help prevent potential safety hazards.

61-106.3.4.12

Text was added to prevent tanning areas from being designed in such a manner that persons not using the tanning device in the area are exposed to line-of-sight accidental ultraviolet radiation exposure.

61-106.3.6.2

Text was added to strengthen and further clarify that consumers cannot tan without protective eyewear.

61-106.3.7.3

Text was added to specify sanitation requirements for torn or cracked pillows used as headrests. The Department has always cited sanitation violations for torn or cracked pillows, but felt specifically listing this item was needed to further strengthen the sanitation regulations.

61-106.3.7.4

Text was added to specify that the consumer cannot be required to clean the tanning equipment or protective eyewear. This requirement was added due to numerous complaints and citations in this area. The regulations currently mention sanitation by a salon employee, but the Department felt specifically listing this item was needed to strengthen the sanitation regulations.

61-106.4.2.5

Text was added to require consumers to be advised that tanning indoors and outdoors in the same day, tanning at multiple salons or similar practices, are hazardous. Some client skin and medical history forms or warning forms currently have this wording. The Department feels that properly educating consumers is an effective means to ensure consumer compliance.

61-106.4.2.6

Text was added to require a consumer to be advised to warn the operator of any new use of medications. Many client skin and medical history or warning forms currently have this wording. The Department feels that an additional warning may prevent photosensitizing reactions.

61-106.4.2.6

Revised to delete "new" to ensure any use of medications is evaluated for potential photosensitivity.

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- 61-106.4.3.1 Text was added to indicate records are to be kept for at least two years or longer if specified by any other requirement and to require the records be readily available at the facility for Department review. The current requirements do not specify time limits or where to maintain records.
- 61-106.4.3.5 Text was added to specify that customer records stored on computers must be backed up. The Department has issued several citations due to deleted records caused by computer malfunctions.
- 61-106.4.4.3 Text was added to require records pertaining to actual or alleged injury reports to be readily available for Department review and kept until the Department authorizes their disposal. The current regulations require the registrant to submit a written report, but does not require further record-keeping by the registrant.
- 61-106.5.3.2 Text was added to require proper documentation if a customer is allowed to tan on their first visit longer than shown on the exposure schedule for the first visit. The Department has required this documentation by interpretation, but it needed to be very specific in order to avoid confusion.
- 61-106.5.3.3 Text was added to made it a violation to overexpose or injure a consumer.
- 61-106.5.3.4 Text was added to prevent consumers from tanning with visits less than twenty four hours apart, if the registrant has knowledge of this fact. This was added to prevent potential overexposure to the consumer.
- 61-106.5.3.5 Text was added to require the consumer to be informed of their tanning time prior to each session. This was added as a safety precaution to prevent overexposure to the consumer.
- 61-106.5.5 Text was added to require facility specific operator training. This section will replace what the Department has previously referred to as on-the-job training.
- 61-106.5.6.3 Text was added to give the Department the authority to require operators to attend another formal training class if they cannot adequately demonstrate their competence. The Department has recently required this of two registrants subjected to enforcement action. This was added because the Department strongly feels that proper education will increase compliance and decrease the potential for overexposure to the public.
- 61-106.5.7 Text was added to allow for temporary operator training. This will require facility personnel hired as tanning equipment operators to have a thirty day period after the effective date of employment to successfully complete formal training, provided they work under the direct supervision of a formally trained operator and they are trained in the subjects covered in Sections 5.4 and 5.5. The regulations currently do not allow facility personnel to operate tanning equipment until after the training course is completed. The added flexibility in this requirement will be of benefit to the registrants.
- 61-16.6.10 Text was added to very clearly and specifically outline requirements for formal training vendors. Most of the requirements are currently being implemented by use of guidance documents, written policy or recommendations.

- 61-106.6.10.4 Revised to add “if applicable” after “tanning facility name and address” for further clarification.
- 61-106.6.10.7 Revised to add a reference to notification for prescheduled versus non-prescheduled classes.
- 61-106.6.11 Text was added to include requirements for the trainers of temporary tanning equipment operators.

(7) Delete requirements that are no longer applicable, feasible or necessary.

<u>SECTION</u>	<u>REVISION</u>
61-106.1.6	Delete the reference to “rule” and “regulation.” These were deleted due to redundancy with the Administrative Procedures Act and S. C. 1976 Code Section 13-7-45.
61-106.1.13.1	Delete the section explaining the purpose of civil penalties. The deletion was made because it is the Department’s opinion that regulations should state what must or must not be done, not why something must or must not be done.
61-106.1.13.5	Delete current schedule of civil penalties. The deletion was made because the schedule of civil penalties has been replaced by the civil penalty matrix system.
61-106.1.13.5.4	Delete schedule of civil penalties and examples of severity level violations. These deletions were made because this section has been replaced in its entirety by the civil penalty matrix system.
61-106.2.2.1	Delete requirements for registration no later than sixty days from the effective date of the regulation. This is not necessary for the revision since the regulations are already effective.
61-106.2.2.3	Revised to delete all information that is currently listed in the regulations, but already included on the application for registration. This will reduce redundancy.
61-106.2.4	Delete requirements pertaining to the expiration of certificate of registration. This provision has never been utilized. Expiration is currently handled in conjunction with fees in 61-106 Section 1.11.
61-106.2.5	Delete requirements pertaining to the renewal of certificate of registration. This provision has never been utilized. Renewal is currently handled in conjunction with fees in 61-106 Section 1.11.
61-106.4.2.3	Delete “and shall be updated periodically” because this part of the requirement was not feasible to implement.
61-106.5.6.1	Revised to delete “No later than two years after the effective date of these regulations” since this is no longer applicable.
61-106.6.6	Revised to delete expiration of certificate of registration.
61-106.6.7	Revised to delete renewal of certificate of registration.

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61-106
Appendix A Revised to delete all references to ethnic origin.

(8) Make stylistic or grammatical changes, correct typographical errors, or change numbering.

- 61-106.1.2.7 Revised to change “person” to “individual.”
- 61-106.1.5.1 Revised to correct the spelling of “therefore.”
- 61-106.1.8.1.1 Revised to replace “Send a letter of” to “Provide written.”
- 61-106.1.9 Revised to change “is not equipped to” to “fails to.”
- 61-106.1.11.5 Revised to refer to Section 1.11.8, a new section, and to add “Section.”
- 61-106.1.11.7 Revised to add “Section.”
- 61-106.1.12 Revised to delete the reference that the offices for the regulation of tanning facilities are located at 2600 Bull Street.
- 61-106.1.13.3.1 Revised to change “any” to “and.”
- 61-106.2.4.2 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.2.5 Revised to delete “certificate” from title and text.
- 61-106.2.8.1.5 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.2.8.1.8 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.2.8.2 Revised to change “certificate of registration” to “registration approval.”
- 61-106.2.8.3 Revised to change “certificate of registration” to “registration approval.”
- 61-106.2.8.4 Revised to change “certificate of registration” to “registration approval.”
- 61-106.2.9 Revised to change “shall prohibit any person from furnishing” to “shall not engage any person to provide.” This change was made for further clarification and to be more grammatically correct.
- 61-106.3.5.1.3 Revised to include “and.”
- 61-106.3.6.1 Revised to delete “their.”
- 61-106.4.2.2 Revised to add “Section” and revised to refer to “Section 4.2.6.”
- 61-106.4.3.2 Revised to add “Section” and revised to change “4.2.1” to “4.2.”

- 61-106.4.3.4 Revised to add “Section.”
- 61-106.4.5 Revised to add “Section.”
- 61-106.5.2 Revised to add a reference to Section 5.6, “Formal Operator Training” and Section 5.7 “Temporary Operator Training.”
- 61-106.6.3.1.2 Revised to change “discharge” to “provide.”
- 61-106.6.4.1 Revised to change “tanning facility fees” to “tanning equipment vendor fees” and “certificate of registration” to registration approval document.”
- 61-106.6.4.2 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.6.4.3 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.6.5 Revised to change “certificate of registration” to “registration approval.”
- 61-106.6.6 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.6.8.1 Revised to change “certificate of registration” to “registration approval document.”
- 61-106.6.8.2 Revised to change “certificate of registration” to “registration approval.”
- 61-106.6.8.3 Revised to change “certificate of registration” to “registration approval.”
- 61-106.6.8.4 Revised to change “certificate of registration” to “registration approval.”

Instructions: Replace existing R.61-106 in its entirety by this amendment.

Text:

R.61-106. Tanning Facilities.

PART I

GENERAL PROVISIONS

1.1 SCOPE:

1.1.1 These regulations provide for the registration and regulation of facilities, equipment and persons installing and/or servicing equipment which employs ultraviolet and other lamps for the purpose of tanning the skin of the human body through the application of ultraviolet radiation.

1.2.2 Nothing in these regulations shall be interpreted as limiting the intentional exposure of patients to ultraviolet radiation for the purpose of medical treatment or therapy prescribed and supervised by a physician who is licensed by the South Carolina Board of Medical Examiners.

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1.2 DEFINITIONS:

As used in this regulation:

1.2.1 “Act” means Atomic Energy and Radiation Control Act, Section 13-7-10 et seq, 1976 Code of Laws of South Carolina.

1.2.2 “Consumer” means any individual who is provided access to a tanning facility which is required to be registered pursuant to provisions of this regulation.

1.2.3 “Department” means the South Carolina Department of Health and Environmental Control.

1.2.4 “Formal Training” means a course of instruction reviewed and approved by the Department which is conducted or presented under formal classroom conditions by a person or persons possessing adequate knowledge and experience to offer a curriculum, associated training and certification testing pertaining to and associated with the correct use of tanning equipment.

1.2.5 “Individual” means any human being.

1.2.6 “Inspection” means an official examination or observation including but not limited to tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Department.

1.2.7 “Minor” means any individual less than eighteen (18) years of age.

1.2.8 “Operator” means any individual designated by the registrant to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment. Under this definition, the term “operator” means any individual who conducts one or more of the following activities:

- 1) determining consumers’ skin type;
- 2) determining the suitability for use of a tanning device by prospective consumers;
- 3) informing the consumer of the dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing reactions;
- 4) determining consumer use of potentially photosensitizing agents;
- 5) assuring the consumer reads and properly signs all forms required by these regulations;
- 6) reviewing, signing, and ensuring required documentation is completed for minors or illiterate or visually impaired consumers;
- 7) maintaining required consumer exposure records;
- 8) recognizing and reporting consumer actual or alleged ultraviolet radiation injuries to the registrant;
- 9) determining the consumers’ exposure schedule, to include exposure time, spacing of visits, number of allowed visits per week and maximum exposure time in minutes, in accordance with the applicable manufacturers’ recommended exposure schedule or Department approved alternate exposure schedule;
- 10) instructing the consumer in the proper use of protective eyewear; and
- 11) setting timers which control the duration of exposure.

1.2.9 “Override Timer Control” means a separate electrical timer, switch, or similar device which may be used by the operator to start or stop the timer system for a tanning device. The term does not include electric panels which control the entire electrical system for a building or a portion of a building.

1.2.10 “Person” means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

1.2.11 “Personal Use” means tanning equipment that is used solely by an individual and the individual’s immediate family or permanent residents of the individual’s place of residence. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, brothers, sisters, children, grandchildren, great-grandchildren of either the owner of the tanning equipment or the spouse.

1.2.12 “Registrant” means any person who is registered with the Department as required by provisions of this regulation.

1.2.13 “Registration” means registering with the Department in accordance with provisions of this regulation.

1.2.14 “Sanitize” means the effective fungal, viral and bacterial treatment of surfaces of tanning equipment by an EPA and DHEC approved product which provides a sufficient concentration of chemicals and enough time to reduce the bacterial count, including pathogens, to an acceptable level.

1.2.15 “Tanning Components” means any constituent tanning equipment part, to include ballasts, starters, lamps, reflectors, acrylic shields, timers, and airflow cooling systems.

1.2.16 “Tanning Equipment” means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation.

1.2.17 “Tanning Facility” means any location, place, area, structure or business which provides consumers access to tanning equipment. For the purpose of this definition tanning equipment registered to different persons at the same location and tanning equipment registered to the same person, but at separate locations, shall constitute separate tanning facilities.

1.2.18 “Ultraviolet Radiation” means electromagnetic radiation with wavelengths in air between two hundred nanometers and four hundred nanometers.

1.2.19 “Unlimited” means any number of visits implied or allowed in excess of the number of visits per week allowed by the tanning equipment manufacturer’s recommended exposure schedule or the Department approved alternate exposure schedule.

1.2.20 “Vendor” means any person or persons providing tanning equipment installation, servicing, and/or services. This shall include, but not be limited to: any person or persons who make, sell, lease, transfer, lend, assemble, repair or install tanning equipment or the components used in connection with such equipment; any person or persons who performs health physics consulting, such as calibration of equipment used to perform surveys of ultraviolet radiation and timer accuracy measurements, performs ultraviolet radiation output and timer accuracy measurements, designs ultraviolet radiation safety programs or procedures; any person or persons who perform preventive maintenance or cleaning services, such as the cleaning of fans, acrylic, lamps, reflectors and other components; any person or persons who conduct training seminars for tanning equipment operators and service personnel.

1.3 COMPLIANCE WITH OTHER LAWS:

The registrant shall comply with any other applicable federal, state and local regulations dealing with health, sanitation, safety standards and electrical standards.

1.4 INSPECTIONS:

1.4.1 Each registrant shall afford, at all reasonable times, the Department or its duly authorized representative the opportunity to inspect equipment and the premises wherein such tanning equipment is used or stored.

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1.4.2 Each registrant shall make available to the Department or its authorized representative for inspection, upon one day's notice, records maintained pursuant to this regulation.

1.5 EXEMPTIONS:

1.5.1 The Department may, upon application therefore or upon its own initiative, grant such exemptions or exceptions from the requirements of this regulation as it determines are authorized by law and will not result in undue hazard to public health and safety.

1.5.2 Any person is exempt from the provisions of this regulation to the extent that such person uses equipment other than tanning equipment which emits ultraviolet radiation incidental to its normal operation.

1.5.3 Any individual is exempt from the provisions of this regulation to the extent that such individual owns tanning equipment exclusively for personal use.

1.5.4 Tanning equipment while in transit or storage incidental thereto is exempt from the provisions of this regulation.

1.6 ADDITIONAL REQUIREMENTS:

The Department may, by order, impose upon any registrant such requirements in addition to those established in this regulation as it deems appropriate or necessary to minimize danger to public health and safety or property.

1.7 VIOLATIONS:

1.7.1 Any person found in violation of this regulation shall notify the Department in writing within twenty calendar days from the date of citation with respect to action that has been taken or planned to correct the violation.

1.7.2 All violations shall be corrected within sixty (60) calendar days from the date of citation. The respondent shall notify the Department in writing of all action taken to correct all violations.

1.7.3 The Department is authorized to hold public hearings, compel attendance of witnesses, make findings of fact and determinations and to assess fines and civil penalties relating to violations of the provisions of the Act or any regulation, temporary or permanent order, or final determination of the Department.

1.7.4 The Department may impose a civil penalty not to exceed Twenty-five Thousand Dollars (\$25,000.00) on a person who violates a provision of the Act, rules, regulations, or orders issued. Each day of continued violation shall constitute a separate offense in computing the civil penalty. Civil penalties shall be assessed as specified in Section 1.13.

1.8 ENFORCEMENT:

1.8.1 Upon determination by the Department that the Act or these regulations have been violated or that a public health risk exists, the Department will:

1.8.1.1 Provide written notification to the noncompliant facility as soon as possible after violations are noted which:

1.8.1.1.1 Cites each section of the Act or regulations violated.

1.8.1.1.2 Specifies the manner in which the registrant failed to comply.

1.8.1.1.3 Requires submission of a timely and comprehensive corrective action plan, including a time schedule for completion of the plan.

1.8.1.1.4 Stipulates a firm time schedule within which a corrective action plan needs to be submitted; the Department will approve the plan and the proposed time schedule for its completion if the plan is adequate.

1.8.1.2 In cases where the registrant fails to comply with the conditions of the written notification sent, a certified letter will be sent ordering compliance and advising appropriate persons that unless corrective action is initiated within ten days, the Department will seek further enforcement action, appropriate penalties and/or direct remedial relief.

1.8.1.3 If the registrant fails to comply with the requirements of the certified letter within ten days, the Department will take one or a combination of the following steps:

1.8.1.3.1 Issue an administrative order which:

1.8.1.3.1.1 Imposes an appropriate civil penalty; or

1.8.1.3.1.2 Requires corrective action; or

1.8.1.3.1.3 Revokes the facility's registration in accordance with Section 2.8; or

1.8.1.3.1.4 Impounds or orders the impounding of sources of ultraviolet radiation in accordance with the Act;

1.8.1.3.2 Request the Department attorney or the attorney general to seek court action to enjoin violations and seek conviction for a simple misdemeanor; or

1.8.1.3.3 Take other enforcement action that the Department feels appropriate and necessary and is authorized by law.

1.8.2 Under an actual or potential condition posing a risk to any individual comparable to a Major severity_level violation, the Department may immediately impound or order the impounding of sources of ultraviolet radiation in accordance with the Act.

1.9 IMPOUNDING:

The Department may immediately impound or order the impounding of tanning equipment in the possession of any person who fails to observe these regulations or provisions of the Act, or when the Department deems a situation to constitute an emergency.

1.10 RECORDS:

Each registrant shall keep records showing the receipt, transfer, repair and disposal of all tanning equipment and components. These records shall be maintained by the registrant for no less than two years and shall be readily available at the tanning facility for Department review. Additional record requirements are specified elsewhere in these regulations.

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1.11 FEES:

1.11.1 Application Fee:

Each registrant shall pay a nonrefundable initial application fee of fifty dollars upon submission of the "Application for Registration of Tanning Facilities" form.

1.11.2 Tanning Equipment Fee:

1.11.2.1 Each registrant shall pay fifty dollars for each piece of tanning equipment.

1.11.2.2 The tanning equipment fee shall be due upon initial registration approval and on July 15 of each year.

1.11.3 Tanning Equipment Vendor Fee:

1.11.3.1 Each registrant providing tanning equipment installation, servicing and/or services shall pay an annual registration fee of one hundred dollars.

1.11.3.2 The registration fee shall be due upon initial application and on July 15 of each year.

1.11.4 Persons failing to pay the fees required by Section 1.11.2 or Section 1.11.3 by September 15 of that year shall also pay a penalty of Fifty Dollars. If the required fees are not paid by October 15 of that year, the registrant shall be notified by certified mail to be sent to his last known address that his registration is revoked, and that any activities permitted under the authority of the registration must cease immediately.

1.11.5 A registrant suspended for failure to pay the required fee under Sections 1.11.2, 1.11.3 or 1.11.8 may be reinstated by the Department upon payment of the required fee, the penalty of Fifty Dollars, and an additional penalty of One Hundred Dollars, if the registrant is otherwise in good standing and presents to the Department a satisfactory explanation for his failure to pay the required fee.

1.11.6 Payment of fees shall be made in accordance with the instructions of a "Statement of Fees Due" issued annually or monthly by the Department.

1.11.7 Fees required by Section 1.11.2 or Section 1.11.3 for tanning equipment or vendor registration which is issued during a calendar year shall be prorated for the remainder of that year based on the date of issuance of the registration.

1.11.8 Persons failing to pay the prorated fees required by Section 1.11.7 within sixty days from the billing date shall also pay a penalty of Fifty Dollars. If the required fees are not paid within ninety days of the billing date, the registrant shall be notified by certified mail to be sent to his last known address that his registration is revoked, and that any activities permitted under the authority of the registration must cease immediately.

1.12 COMMUNICATIONS:

All communications and reports concerning these regulations, and registrations filed thereunder, shall be addressed to the Department at:

SC Department of Health and Environmental Control
Radiological Health Branch

South Carolina State Register Vol. 24, Issue 5
May 26, 2000

2600 Bull Street
Columbia, SC 29201

1.13 CIVIL PENALTIES:

1.13.1 Assessment - Assessment of civil penalties shall be based on the following criteria:

- 1.13.1.1 the seriousness of the violation(s);
- 1.13.1.2 previous compliance history;
- 1.13.1.3 the amount necessary to deter future violations;
- 1.13.1.4 efforts to correct the violation; and
- 1.13.1.5 any other mitigating or enhancing factors.

1.13.2 Severity Levels - The seriousness of violations shall be categorized by one of the following severity levels:

1.13.2.1 Major - Violations that are most significant and have a direct negative impact on occupational and/or public health and safety or which represent a significant deviation from the requirements of this regulation.

1.13.2.2 Moderate - Violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances or which represent a moderate deviation from the requirements of this regulation.

1.13.2.3 Minor - Violations that are of minor safety significance or which represent a minor deviation from the requirements of this regulation.

1.13.2.4 In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

1.13.3 Application - Examples of violations in each severity level are given in the Schedule of Civil Penalties. While examples are given for determining the appropriate severity level for violations, the examples are neither exhaustive nor controlling. These examples do not create new requirements. Each is designed to illustrate the significance which the Department of Health and Environmental Control places on a particular type of violation of state requirements. Adjustments to the values listed in the Schedule of Civil Penalties under each severity level may be made for the presence or absence of the following factors:

1.13.3.1 Prompt Identification and Reporting. Reduction of a civil penalty may be given when a registrant identifies the violation and promptly reports the violation to the Department. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to the discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to this factor if the registrant does not take immediate action to correct the problem upon discovery.

1.13.3.2 Corrective Action to Prevent Recurrence. Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the registrant takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed. Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty. On the other hand, the civil penalty may be increased if initiation of corrective action is not prompt or if the corrective action is only

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minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of registrant initiative, and comprehensiveness of the corrective action-such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

1.13.3.3 Compliance History. Reduction of the civil penalty may be given for prior good performance in the general area of concern. In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as previous compliance history in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty.

1.13.3.4 Prior Notice of Similar Events. The civil penalty may be increased for cases where the registrant had prior knowledge of a problem as a result of a registrant audit, or specific industry notification, and had failed to take effective preventative steps.

1.13.3.5 Multiple Occurrences. The civil penalty may be increased where multiple examples of particular violation are identified during the inspection period.

1.13.3.6 The above factors are additive. However, the civil penalty will not exceed Twenty-five Thousand Dollars (\$25,000) for any one violation. Each day of noncompliance shall constitute a separate violation.

1.13.4 The Department shall issue civil penalties according to the following schedule:

1.13.4.1 Penalty Matrix

Deviation from Requirement:	Major (11-30)	Moderate (4-10)	Minor (1-3)
Potential for Harm:			
Major (11-70)	\$10,000- 2,200	\$8,000-1,500	\$7,300-1,200
Moderate (6-10)	\$ 4,000-1,700	\$2,000-1,000	\$1,300-700
Minor (0-5)	\$ 3,500-1,100	\$1,500-400	\$800-100

Calculation of Base Penalty:

Each violation is assigned a relative point value as follows: Potential for Harm- 0-70, with 70 being maximum harm; Deviation from the Requirement- 1-30, with 30 being the maximum deviation. Add the two values together, convert to a decimal value (15 to .15, for example), and multiply by the maximum per day per violation per civil penalty (\$10,000). This is the base civil penalty per violation. The base penalty may be increased for repeat violations, multi-day penalties and/or degree of recalcitrance, willfulness, negligence, or indifference.

Minimum Increase for Repeat Violations Found on Follow-up Inspections or Reinspections

Second Offense (First Follow-up Inspection or First Reinspection)	15%
Third Offense (Second Follow-up Inspection or Second Reinspection)	30 %
Fourth Offense (Third Follow-up Inspection or Third Reinspection)	45%
Fifth and Subsequent Offenses	60%

Multi-Day Penalties

Increase penalty 1% to 7% for each day of noncompliance.

Degree of Recalcitrance, Willfulness, Negligence, or Indifference
Increase penalty 10% to 50%.

1.13.4.2 The Department reserves the right to impose a civil penalty up to Twenty-five Thousand Dollars on a person who operates a tanning facility in such a manner so as to present an imminent hazard to human health and safety. The Twenty-five Thousand Dollars civil penalty may be levied for the following:

1.13.4.2.1 Three or more failures within three consecutive inspections to utilize a consumer warning system and/or a skin/medical history system (R.61-106 Sections 2.3.4, 4.2).

1.13.4.2.2 Three or more failures within three consecutive inspections of failure to ensure consumers either have compliant protective eyewear or are prohibited from tanning (R.61-106 Sections 3.6.1, 3.6.2);

1.13.4.2.3 Two or more incidents within three consecutive inspections of use of lamps for medical use only (R.61-106 Section 3.8.4);

1.13.4.2.4 Seven or more incidents within three consecutive inspections of allowing the operation of tanning equipment in such a manner so as to cause an injury to a consumer resulting from the same cause (R.61-106 Section 5.3.3);

1.13.4.2.5 Three or more incidents within three consecutive inspections of a required system designed to prevent or mitigate a serious safety event is absent or inoperable due to a deliberate act by a registrant such as: removing a timer (R.61-106 Sections 3.4.3, 3.4.5) or device designed to enable the consumer to terminate manually radiation emission (R.61-106 Section 3.4.6); failure to provide compliant physical protective barriers (R.61-106 Section 3.4.8); or, failure to replace defective filters (R.61-106 Section 3.8.3).

1.13.4.3 Examples of Violations with Potential for Harm

Major

Three or more failures within three consecutive inspections to correct violations within sixty days when the violations have major safety significance (R.61-106 Section 1.7.2).

Three or more failures within three consecutive inspections to correct violations involving matters pertaining to failure to follow or establish procedures, rules and regulations that have major safety significance (R.61-106 Section 2.3).

Failure to utilize a consumer warning system and/or a skin/medical history system (R61-106 Sections 2.3.4, 4.2).

Three or more failures within three consecutive inspections to meet consumer warning requirements (R.61-106 Sections 2.3.4, 4.2).

Three or more failures within three consecutive inspections to use tanning equipment manufactured in accordance with 21.CFR 1040.20 regarding compliant labeling (recommended lamps and/or recommended exposure schedule missing or not legible) (R.61-106 Section 3.4.1).

Three or more failures within three consecutive inspections to ensure timer accuracy requirements when the timer inaccuracy is greater than 20 percent (R.61-106 Sections 3.4.3, 3.4.9).

Three or more failures within three consecutive inspections to ensure maximum exposure time requirements (R.61-106 Section 3.4.3).

A required system designed to prevent or mitigate a serious safety event is absent or inoperable due to a deliberate act by a registrant such as: removing a timer (R.61-106 Sections 3.4.3, 3.4.5) or device designed to enable the consumer to terminate manually radiation emission (R.61-106 Section 3.4.6); failure to provide compliant

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physical protective barriers (R.61-106 Section 3.4.8); or, failure to replace defective filters (R.61-106 Section 3.8.3).

Three or more failures within three consecutive inspections to comply with override timer control requirements (R.61-106 Section 3.4.3.1-3.4.3.5).

Three or more failures within three consecutive inspections to adequately indicate timer intervals in such a manner that the exposure time cannot be reasonably set (R.61-106 Section 3.4.4).

Three or more failures within three consecutive inspections to ensure a timer does not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the tanning device has been terminated (R.61-106 Section 3.4.5).

Three or more failures within three consecutive inspections to ensure a tanning device is provided with an emergency off switch (R.61-106 Section 3.4.6).

Three or more failures within three consecutive inspections to ensure tanning equipment meets the National Fire Protection Association National Electrical Code, is provided with ground fault protection or other means for preventing shock (R.61-106 Section 3.4.7).

Three or more failures within three consecutive inspections to ensure tanning equipment has physical barriers to protect consumers from injury induced by touching or breaking the lamps (R.61-106 Section 3.4.8).

Three or more failures within three consecutive inspections to ensure a tanning device is maintained in good repair in order to prevent any mechanical safety hazards (R.61-106 Section 3.4.11).

Three or more failures within three consecutive inspections to ensure physical barriers protect persons who are not using a tanning device from line-of-sight accidental ultraviolet radiation exposure (R.61-106 Section 3.4.12).

Three or more failures within three consecutive inspections to ensure consumers have compliant protective eyewear (R.61-106 Section 3.6.1).

Failure to prohibit consumers from tanning when a consumer does not have compliant protective eyewear (R.61-106 Section 3.6.2).

Three or more failures within three consecutive inspections to instruct consumers in the proper utilization of protective eyewear prior to initial exposure (R.61-106 Section 3.6.3).

Three or more failures within three consecutive inspections to ensure protective eyewear is used in accordance with manufacturer's design, instructions or approval (R.61-106 Section 3.6.5).

Three or more failures within three consecutive inspections to ensure protective eyewear is in optimal condition (R.61-106 Section 3.6.4).

Three or more failures within three consecutive inspections to ensure protective eyewear meets the requirements of 21 CFR 1040.20 (c)(4) (4-1-87 edition) (R.61-106 Section 3.6.6).

Three or more failures within three consecutive inspections to properly sanitize protective eyewear or tanning equipment (R.61-106 Section 3.7).

Failure to submit a report of actual or alleged injury (R.61-106 Section 4.4).

Two or more failures within three consecutive inspections to use lamps equivalent or compatible under 21 CFR 1040.20 (R.61-106 Section 3.8.1).

Use of lamps for medical use only (R.61-106 Section 3.8.4).

Three or more failures within three consecutive inspections to comply with the manufacturer's recommended maximum exposure time in minutes (R.61-106 Section 5.3.1).

Three or more failures within three consecutive inspections of allowing the operation of the tanning equipment in such a manner so as to cause an injury to a consumer (R.61-106 Section 5.3.3).

Three or more failures within three consecutive inspections to ensure consumers have not tanned less than twenty-four hours between visits (R.61-106 Section 5.3.4).

Three or more failures within three consecutive inspections to ensure that only the consumer using the tanning equipment is in the room or area with the tanning equipment while the tanning equipment is in operation (R.61-106 Section 5.3.6).

Moderate

Three or more failures within three consecutive inspections to correct violations within sixty days when the violations have moderate safety significance (R.61-106 Section 1.7.2).

Three or more failures within three consecutive inspections to correct violations involving matters pertaining to failure to follow or establish procedures, rules and regulations that have more than minor safety significance (R.61-106 Section 2.3).

Three or more failures within three consecutive inspections to maintain required records (R.61-106 Sections 2.3, 4.2, 4.3, 4.4, 5.3.2).

Three or more failures within three consecutive inspections to use tanning equipment manufactured in accordance with 21.CFR 1040.20 (R.61-106 Section 3.4.1).

Three or more failures within three consecutive inspections to comply with additional requirements for stand-up booths or any other cabinet or vertical tanning device (R.61-106 Section 3.5).

Three or more incidents within three consecutive inspections of allowing minors to use tanning equipment without proper consent (R.61-106 Section 4.5).

Three or more failures within three consecutive inspections to ensure that the tanning equipment is only operated by adequately trained personnel (R.61-106 Section 5.2).

Three or more failures within three consecutive inspections to train operators as provided by R.61-106 Sections 5.4 (R.61-106 Sections 5.4, 5.5, 5.6, 5.7).

Three or more instances within three consecutive inspections of making, selling, transferring, lending, repairing, assembling, recertifying, upgrading or installing tanning equipment without it meeting all applicable regulations, when placed into operation (R.61-106 Section 6.9.3).

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Three or more failures within three consecutive inspections to correct violations involving matters pertaining to failure to follow or establish procedures, rules and regulations that have minor safety significance (R.61-106 Section 2.3).

Repeated violations (three or more failures within three consecutive inspections) not covered in a more severe category that have minor safety significance.

1.13.4.4 Examples of Violations Categorized by Deviation from the Requirement.

Major

Failure to allow authorized Department personnel access to tanning facilities and/or equipment to conduct inspections or investigations (R. 61-106 Section 1.4.1).

Failure to allow authorized Department personnel access to records during an inspection or investigation upon reasonable notice (R.61-106 Section 1.4.2).

Three or more failures within three consecutive inspections to correct violations within sixty days (R.61-106 Section 1.7.2).

Continuation of registrant activities after revocation of registration (R.61-106 Section 1.11.4, 1.11.8).

Three or more failures within three consecutive inspections to post inspection results (R.61-106 Section 1.14).

Three or more incidents of making false material statements to the Department (R.61-106 Section 1.15).

Three or more failures of a person to apply for registration prior to beginning operation of a tanning facility (R.61-106 Section 2.2.1).

Three or more failures of a person to supply supporting information to the Department for application review (R.61-106 Sections 2.2.2, 2.2.3).

Three or more failures within three consecutive inspections to follow established operating procedures (R.61-106 Section 2.3.1).

Three or more incidents of operating a tanning facility without prior issuance of a registration approval document or notification from the Department of an approval to operate (R.61-106 Sections 2.4.3, 2.4.4).

Three or more failures of a registrant to register tanning equipment (R.61-106 Section 2.6.1).

Three or more incidents of a tanning facility having its registration denied, suspended or revoked (R.61-106 Section 2.8).

Three or more failures within three consecutive inspections to post warning signs (R.61-106 Section 3.3.1, 3.3.2).

Three or more failures within three consecutive inspections to maintain a record of operator training (R.61-106 Section 5.7).

Three or more incidents of providing tanning vendor services without being registered with the Department (R.61-106 Sections 6.2, 6.4.3).

Three or more incidents of a person failing to provide a complete application for registration of tanning equipment servicing or services (R.61-106 Section 6.3).

Continuation of registrant activities after revocation of registration (R.61-106 Section 6.8).

Three or more failures within three consecutive inspections of a person to notify the Department in writing within thirty days when he has sold, leased, transferred, lent, assembled, recertified, upgraded or installed tanning equipment (R.61-106 Section 6.9.1).

Three or more incidents within three consecutive inspections of failing to meet requirements for formal trainers (R.61-106 Section 6.10.1, 6.10.2, 6.10.5, 6.10.6). Also add as applicable for temporary tanning equipment operator training.

Failure to allow authorized Department personnel to audit any training class (R.61-106 Section 6.10.8).

Moderate

Three or more failures within three consecutive inspections by a registrant to notify the Department in writing within twenty days of a violation citation with regards to corrective action taken or planned to correct each violation (R.61-106 Section 1.7.1).

Three or more failures within three consecutive inspections to maintain required records (R.61-106 Sections 1.10, 3.8.2, 4.3.4, 4.6).

Three or more incidents within three consecutive inspections of prohibited advertisement or posting (R.61-106 Section 2.7).

Three or more incidents within three consecutive inspections of utilizing an unregistered provider of tanning equipment servicing or services (R.61-106 Section 2.9).

Three or more failures within three consecutive inspections to perform quarterly tests of timers or emergency off switches (R.61-106 Sections 3.4.9, 3.4.10).

Three or more failures within three consecutive inspections to instruct consumers regarding the selected exposure time (R.61-106 Section 5.3.5).

Three or more incidents within three consecutive inspections of failure to report a change to the Department in writing (R.61-106 Section 6.6).

Three or more incidents within three consecutive inspections of prohibited advertisement (R.61-106 Section 6.7).

Three or more incidents within three consecutive inspections of failure to maintain records of course completion and test results (R.61-106 Section 6.10.3).

Three or more incidents within three consecutive inspections of failure to provide the Department with training course results (R.61-106 Section 6.10.4).

Three or more incidents within three consecutive inspections of failing to notify the Department in writing of any training class being conducted (R.61-106 Section 6.10.7).

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Failure by a registrant to notify the Department in writing within twenty days of a violation citation with regards to corrective action taken or planned to correct each violation (R.61-106 Section 1.7.1).

Failure of a registrant to register tanning equipment within thirty days (R.61-106 Section 2.6.1).

Failure of a vendor to notify the Department of installation of tanning equipment by the tenth of each month (R.61-106 Section 6.9.1).

1.14 POSTING OF INSPECTION RESULTS:

Each registrant shall post the results of its most recent radiological health inspection.

1.14.1 The inspection results shall be posted in such a manner that the inspection is clearly visible, not obstructed by any barrier, equipment or other object, and can be easily viewed by a consumer prior to entering any tanning device.

1.14.2 The inspection results shall be clearly labeled immediately above the inspection results with the words "DHEC INSPECTION RESULTS" in letters at least one inch tall and a statement "Contact DHEC at (803) 737-7400 if there are any questions" in letters at least one inch tall.

1.14.3 The inspection results shall be posted on forms provided by the Department.

1.14.4 The inspection results shall not be removed until the next Department inspection is performed or unless authorized by the Department in writing.

1.14.5 The registrant may post its response to the Department's inspection and the Department's inspection compliance letter alongside or in close proximity to the inspection results required to be posted by Section 1.14. These cannot be posted over or on top of the inspection results.

1.15 MATERIAL FALSE STATEMENT:

It shall be a violation to make a material false statement to the Department regarding information contained in the application for registration, information pertaining to an inspection or any other information required by any provision of these regulations.

1.16 SEVERABILITY:

If any provision of this regulation or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of the regulation are severable.

PART II

REGISTRATION OF TANNING FACILITIES AND EQUIPMENT

2.1 PURPOSE AND SCOPE:

This Part provides for the registration of facilities and equipment which employ ultraviolet and other lamps for the purpose of tanning the skin of the human body through the application of ultraviolet radiation.

2.2 APPLICATION FOR REGISTRATION OF TANNING FACILITIES:

2.2.1 Each person acquiring or establishing a tanning facility shall apply for registration of such facility prior to beginning operation of such a facility.

2.2.2 The registrant shall complete and submit all information required by DHEC 0826, Registration of Tanning Equipment. The application shall contain all the information required by such forms and any supporting information as described in Section 2.2.3. The Department shall review the information required to be submitted by DHEC 0826 and shall determine if the information is adequate. The Department shall issue a letter of registration approval if the information required to be submitted by DHEC 0826, this Section and Section 2.3 is found to be adequate and the application fee required by Section 1.11.1 has been paid.

2.2.3 The Department shall require the following supporting information, as a minimum, to be submitted for review and approval with DHEC 0826: 1) the geographic areas of the State to be covered, if the application is for a mobile tanning facility; 2) copies of the consent forms and statements which the consumer, parent or guardian will be required to sign pursuant to Sections 4.2 and 4.5 of this regulation; 3) Copies of the medical and skin history system and copies and/or a description of the exposure record system required to be completed pursuant to Section 4.2; 4) Operating procedures as described in Section 2.3; 5) Copy of each manufacturer's recommended exposure schedule and the recommended lamps for each model of tanning device and a copy of any proposed alternate exposure schedule; 6) a copy of a formal training certificate for each operator or proof of successful completion of a formal training class or approved temporary training; 7) a copy of any other operating and safety procedures unique to facility operation; 8) certification that the applicant has read and understands the requirements of this regulation. Such certification shall be signed and dated by the manager and the owner of the tanning facility.

2.3 OPERATING PROCEDURES:

2.3.1 The registrant shall establish and submit operating procedures for Department review and approval. The Department shall review the operating procedures and shall determine if the procedures are adequate. If the procedures are adequate, the Department shall approve the operating procedures, and the registrant shall adhere to the operating procedures in all respects. Any changes to the approved operating procedures shall be submitted to the Department in writing. The registrant must not incorporate the changes into the operating procedures until the Department has approved the changes in writing.

2.3.2 As part of the operating procedures required under this Section, the registrant shall establish and use a procedural manual that will aid in protecting the consumer from excessive or unnecessary exposure to ultraviolet radiation. This procedural manual shall be kept at the registrant's facility and must be available at all times to operators and Department inspectors. Each registrant's procedural manual shall include, at a minimum:

- 1) instructions to the consumer, to include but not be limited to: illiterate or visually impaired persons unable to sign their name; minors; completion and review of the tanning profile or client card; consumer use of medications; consumers with contact lenses; consumers with cataracts; consumers with skin problems; consumers with current or previous other health conditions; removal of makeup and other substances; nude tanning; pregnant consumers; tanning of children; indoor/outdoor tanning; and, consultation of records;
- 2) use of protective eyewear;
- 3) suitability of prospective consumers for tanning equipment use;
- 4) adherence to the manufacturer's recommended exposure schedule, or an approved alternate exposure schedule as described in Section 2.3.3 of this regulation, or the procedures used for determining to allow a

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consumer to exceed the schedule as described in Section 2.3.4, including determining exposure times, frequency of visits, spacing of visits and maximum exposure time(s) in minutes;

- 5) quarterly testing of tanning equipment timers and emergency off switches;
- 6) handling of complaints of actual or alleged ultraviolet radiation injury from consumers;
- 7) records to be maintained on each consumer;
- 8) sanitizing tanning equipment and protective eyewear;
- 9) use of potentially photosensitizing medications and substances;
- 10) training requirements;
- 11) requirements of R.61-106.

2.3.3 Alternate exposure schedule. A registrant may submit for Department consideration and approval an alternate method for determining exposure times and frequencies. Any proposed alternate exposure schedule shall be supported by reliable, accurate and reproducible scientific evidence of results from a reputable source. The source of this supporting information cannot be generated by the registrant. The Department will allow use of an alternate exposure schedule under the following conditions:

2.3.3.1 The alternate exposure schedule and supporting test data and results shall be submitted in writing for Department review and written approval prior to its use;

2.3.3.2 The manufacturer's recommended exposure schedule shall be submitted to the Department along with the proposed alternate exposure schedule;

2.3.3.3 The manufacturer's recommended lamp or a documented equivalent lamp shall be used;

2.3.3.4 The testing laboratory or other testing institution used shall be recognized by the Food and Drug Administration for conducting spectroradiometric measurements and testing;

2.3.3.5 A complete report of calibration shall be submitted to the Department, to include indication that a valid, scientific basis exists and is documented for the alternate exposure schedule.

2.3.3.6 The maximum exposure time for any applicable timer shall not be able to be set to a time greater than the manufacturer's recommended maximum exposure time;

2.3.3.7 The alternate exposure schedule shall meet all criteria outlined by the Food and Drug Administration's Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products issued August 21, 1986; and

2.3.3.8 The alternate exposure schedule shall be posted in the tanning room for which it is to be used and shall be readily available for the operator's use.

2.3.4 The registrant may allow a consumer to exceed the manufacturer's recommended exposure schedule, or an alternate exposure schedule approved under Section 2.3.3 of this regulation, provided that the consumer is educated regarding the potential risks associated with tanning beyond such exposure schedules. Consumer education must include a document signed by the consumer informing the consumer of the potential risks and an oral review of the information contained in the document. The document must be signed on a consumer's initial visit, and must be renewed at least annually thereafter or maintained continually throughout the consumer's patronage of the facility. The document signed by the consumer must include the following language verbatim:

For All Consumers:

DANGER - ULTRAVIOLET RADIATION

X Follow instructions.

X Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious skin injury and allergic reactions. Repeated exposure may cause chronic sun damage characterized by wrinkling, dryness, fragility and bruising of the skin and skin cancer.

X wear protective eyewear. Failure to use protective eyewear in accordance with the manufacturer's instructions may result in severe burns or long-term injury to the eyes.

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For individuals under the age of eighteen (18), parent or legal guardian must also sign consenting to the above warning and for use of tanning equipment.

Signature of Consumer Date Parent or Legal Guardian Date

For illiterate or visually impaired persons unable to sign their name:

I have read the warning to _____ in the presence of the witness, _____, and to the best of knowledge the consumer understands the risk associated with this warning.

Signature of Witness Date Signature of Operator Date

2.4 ISSUANCE OF REGISTRATION APPROVAL DOCUMENT:

2.4.1 Upon determination that an application meets the requirements of this regulation and the application and tanning facility fees have been paid, the Department shall issue a registration approval document.

2.4.2 The Department may incorporate in the registration approval document, at the time of issuance or thereafter by appropriate rule or order, such additional requirements and conditions with respect to the registrant's receipt, possession, use and transfer of tanning equipment and tanning facilities as the Department deems appropriate or necessary.

2.4.3 No person shall operate a tanning facility until the Department has issued a registration approval document or otherwise received notification from the Department of an approval to operate.

2.4.4 Any facility found operating unregistered shall immediately cease operation until approval by the Department is issued.

2.5 TRANSFER OF REGISTRATION:

No registration shall be transferred from one person to another or from one tanning facility to another tanning facility.

2.6 REPORT OF CHANGE:

2.6.1 The registrant shall notify the Department in writing within thirty days of making any change which would render the information contained in the application for registration or the registration approval document no longer accurate.

2.6.2 This requirement shall not apply for changes involving replacement of tanning equipment lamps, or changes involving the addition or deletion of tanning equipment operators.

2.7 PROHIBITED ADVERTISEMENT AND POSTING:

2.7.1 No person, in any advertisement or posting, shall refer to the fact that such person or such person's facility is registered with the Department pursuant to the provisions of this regulation, and no person shall state or imply that any activity under such registration has been approved by the Department.

2.7.2 No person, in any advertisement or posting, shall indicate that such person's tanning equipment is safe or free of hazards from ultraviolet radiation. This includes such statements as "no burning," "no harmful rays," "no adverse affects," "safe tanning," "healthy" or similar wording of concepts.

2.7.3 No person, in any advertisement or posting, shall claim any medical or health benefits from such person's tanning equipment, nor imply use as a medical device or treatment.

2.7.4 No person or facility shall advertise or promote tanning packages labeled as "unlimited."

2.7.5 No person, in any advertisement or posting, shall promote tanning exposure times, number of visits per week, or spacing of visits in excess of those in accordance with the manufacturer's recommended exposure schedule or Department approved alternate exposure schedule.

2.8 DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION:

2.8.1 The Department may deny an application or suspend or revoke registration or a registration approval document issued pursuant to this regulation: 1) for any material false statement in the application for registration or in the statement of fact required by provisions of this regulation; or 2) for falsification or alteration of records required to be kept by this regulation; or 3) because of conditions revealed by the application or any report, record, inspection or other means which would warrant the Department to refuse to grant a certificate of registration on an original application; or 4) for operation of the tanning facility in a manner that causes or threatens to cause hazard to the public health or safety; or 5) for failure to allow authorized representatives of the Department to enter the tanning facility at reasonable times for the purpose of determining compliance with the provisions of this regulation, conditions of the registration approval document or an order of the Department; or 6) for failure to pay any fee required in Section 1.11 of this regulation; or 7) for failure to correct violations within sixty (60) calendar days from the date of the citation; or 8) for violation of, or failure to observe any of the terms and conditions of the registration approval document, this regulation, or an order of the Department; or 9) when the current owner of the tanning facility has one or more of the following at another salon: outstanding compliance issues, a poor compliance history, outstanding fees or penalties due, unresolved enforcement action, or a Major severity level violation.

2.8.2 Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, prior to the institution of proceedings for suspension or revocation of a registration approval, the Department shall: 1) call to the attention of the registrant, in writing, the facts or conduct which may warrant such actions, and 2) provide reasonable opportunity for the registrant to demonstrate or achieve compliance with all lawful requirements.

2.8.3 Any person aggrieved by a decision by the Department to deny a registration approval or to suspend or revoke a registration approval after issuance may request a hearing under provisions of the South Carolina Administrative Procedures Act.

2.8.4 The Department may terminate a registration approval upon receipt of a written request for termination from the registrant.

2.9 VERIFICATION OF SERVICE REPRESENTATIVE:

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Each registrant shall not engage any person to provide tanning equipment servicing or services as described in this Part until such person provides evidence that he has been registered with the Department as a provider of services in accordance with these regulations.

PART III

STANDARDS FOR THE CONSTRUCTION AND OPERATION OF TANNING EQUIPMENT

3.1 PURPOSE AND SCOPE:

This Part provides for the construction and operation of tanning equipment which employ ultraviolet and other lamps for the purpose of tanning the skin of the human body through the application of ultraviolet radiation.

3.2 CONSTRUCTION AND OPERATION OF TANNING EQUIPMENT:

Except as otherwise ordered or approved by the Department, each tanning facility shall be constructed, operated and maintained in accordance with the requirements in this regulation.

3.3 WARNING SIGNS:

3.3.1 The following warning sign shall be conspicuously posted in the immediate proximity (within one meter) of each piece of tanning equipment; it shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the consumer can easily view the warning sign before energizing this tanning equipment.

“DANGER - ULTRAVIOLET RADIATION

Follow instructions. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious skin injury and allergic reactions. Repeated exposure may cause chronic sun damage characterized by wrinkling, dryness, fragility and bruising of the skin and skin cancer.

WEAR PROTECTIVE EYEWEAR. FAILURE TO USE PROTECTIVE EYEWEAR IN ACCORDANCE WITH THE MANUFACTURER’S INSTRUCTIONS MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

Ultraviolet radiation from sunlamps will aggravate the effects of the sun. Do not sunbathe before or after exposure to ultraviolet radiation. Certain foods, medications (including, but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medication, birth control pills and skin creams), cosmetics or toiletries may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. Pregnant women or women who are using birth control pills who use this product may develop discolored skin. If you do not tan in the sun, you are unlikely to tan from the use of this product.”

The lettering on each warning sign shall be at least ten (10) millimeters high for all words shown in capital letters and at least five (5) millimeters high for all lower case letters.

3.3.2 The following warning sign shall be conspicuously posted in the immediate proximity (within one meter) of each piece of tanning equipment; it shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, other item present so that the consumer can easily view the warning sign before energizing this tanning equipment:

If you receive any injury, such as a burn or other physical injury, from the use of this tanning device, you should report this injury immediately to a tanning equipment operator and immediately, within twenty-four (24) hours, to the SC Department of Health and Environmental Control, Radiological Health Branch, 2600 Bull Street, Columbia, SC 29201, or contact the Department by telephone at (803) 737-7400.

The lettering on each warning sign shall be at least one inch high for all words.

3.4 EQUIPMENT AND FACILITY CONSTRUCTION REQUIREMENTS:

3.4.1 The registrant shall use only tanning equipment manufactured in accordance with the specifications set forth in 21 CFR 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products." The exact nature of compliance shall be based on the standards in effect at the time of manufacture as shown on the device identification label required by 21 CFR 1010.3.

3.4.2 Each assembly of tanning equipment shall be designed for use by only one consumer at a time.

3.4.3 Each assembly of tanning equipment shall be equipped with a timer which complies with the requirements of 21 CFR 1040.20 (c) (2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error exceeding plus or minus ten percent of the maximum timer interval for the product.

3.4.3.1 All tanning equipment shall be provided with an override timer control installed outside of the room in which a tanning device is located.

3.4.3.2 The remote timer shall be operated only by a formally trained operator and shall be located so that the consumer cannot easily set or reset the consumer's own exposure time.

3.4.3.3 The remote timer(s) shall comply with the requirements for timers as provided in Section 3.4.

3.4.3.4 New facilities shall install remote timers during the installation of the tanning equipment. Existing facilities with a change of ownership shall not receive an application approval document without proof of the remote timer installation.

3.4.3.5 Existing tanning devices not equipped with a remote timer control system shall have the remote timer(s) installed within a year of the effective date of these regulations.

3.4.4 The timer intervals shall be indicated in such a manner that it is consistent with the exposure times on the manufacturer's recommended exposure schedule or the Department approved alternate exposure schedule.

3.4.5 The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the tanning device has been terminated.

3.4.6 Each assembly of tanning equipment shall be provided with a control on the equipment to enable the consumer to terminate manually radiation emission from the equipment at any time without disconnecting the electrical plug or removing any ultraviolet lamp.

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3.4.7 Tanning equipment shall meet the National Fire Protection Association National Electrical Code and shall be provided with ground fault protection on the electrical circuit, or other methods for preventing shock.

3.4.8 Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps.

3.4.9 The registrant shall ensure that tests are performed quarterly on each assembly of tanning equipment and documented in writing to ensure the timer is accurate to within ten percent (10%) as specified in Section 3.4.3 and the consumer is able to terminate the radiation manually as specified in Section 3.4.6. The tests shall include the date of the test and the timer test shall include the indicated time versus the measured time. The timer shall be tested at the tanning equipment manufacturer's recommended maximum exposure time.

3.4.10 Timer and emergency off switch tests shall be performed upon initial installation, prior to the initial use of the timer device by a consumer and also upon any repair or replacement of the timer or emergency off switch. The date of each test shall be recorded and any timer test shall include the indicated time versus the measured time. The timer shall be tested at the tanning equipment manufacturer's recommended maximum exposure time.

3.4.11 The tanning devices shall be maintained in good repair in order to prevent any mechanical safety hazards.

3.4.12 There shall be physical barriers around each tanning device which is in use to protect persons who are not using the device from line-of-sight accidental ultraviolet radiation exposure.

3.5 ADDITIONAL REQUIREMENTS FOR STAND-UP BOOTHS AND ANY CABINET OR VERTICAL TANNING DEVICE:

3.5.1 Tanning booths designed for stand-up use shall also comply with the following additional requirements:

- 1) Booths shall have physical barriers or other means compliant with 21 CFR 1040.20, such as floor markings, to indicate the manufacturer's recommended exposure position or minimum use distance between the ultraviolet lamps and the consumer's skin;
- 2) Booths shall be constructed with sufficient strength and rigidity to withstand the stress of use and the impact of a falling person;
- 3) Access to booths shall be of rigid construction with doors which are non-locking and open outwardly; and
- 4) The floor inside each booth shall be kept clean and shall be maintained in a non-slip manner.

3.6 PROTECTIVE EYEWEAR:

3.6.1 If a consumer does not provide protective eyewear, the registrant shall have compliant protective eyewear available for each consumer to use during any use of tanning equipment.

3.6.2 If a consumer fails to provide compliant protective eyewear and chooses not to use the protective eyewear available from the registrant, then the consumer shall not be allowed to tan.

3.6.3 Prior to initial exposure, the tanning facility operator shall instruct the consumer in the proper utilization of the protective eyewear required by this regulation, to include use in accordance with the manufacturer's design, instructions and approval.

3.6.4 Tanning facility operators shall ensure all protective eyewear is in optimal condition.

3.6.5 Tanning facility operators shall ensure the protective eyewear to be used by the consumer is to be used in accordance with its design.

3.6.6 The protective eyewear in this regulation shall meet the requirements of 21 CFR 1040.20 (c) (4) (4-1-87 edition).

3.7 SANITATION:

3.7.1 The registrant shall ensure that the protective eyewear provided by the registrant required by this regulation are properly sanitized before each use and shall not rely upon exposure to the ultraviolet radiation produced by the tanning equipment itself to provide sanitizing. The sanitizer used shall be one intended and documented for use on protective eyewear and is registered with the Environmental Protection Agency and the Department. The sanitizer shall be mixed and used according to the manufacturer's instructions.

3.7.2 The registrant shall ensure that a salon employee properly sanitizes the tanning equipment between every use by a consumer. The tanning equipment shall be properly sanitized in order to prevent the spread of pathogens. The sanitizer used shall be one intended and documented for use on tanning equipment which is registered with the Environmental Protection Agency and the Department. The areas of the tanning equipment that shall be sanitized include, but are not limited to, the handrails, headrests and bed surfaces. The sanitizer shall be mixed and used according to the manufacturer's instructions.

3.7.3 A torn or cracked pillow or headrest shall be immediately removed from use until it has been replaced or repaired. Any repair shall be such that the pillow or headrest can be sanitized properly.

3.7.4 A registrant shall not require a consumer to sanitize the tanning equipment or protective eyewear and shall not post any signs requesting such sanitation be performed by the consumer. However, this does not prevent a consumer from resanitizing the tanning equipment or protective eyewear if a consumer so chooses after the registrant has performed the sanitation.

3.8 REPLACEMENT OF ULTRAVIOLET LAMPS, BULBS OR FILTERS:

3.8.1 The registrant shall only use lamps which have been certified with the Food and Drug Administration (FDA) as "equivalent" lamps under the FDA regulations and policies applicable at the time of the replacement of the lamps. The format for the equivalency document shall be in compliance with 21 CFR 1040.20, and shall be in the form of User Instructions.

3.8.2 The registrant shall maintain manufacturer's literature demonstrating the equivalency of any replacement lamps that are not identified as original equipment. The documents for any lamps currently in use shall be kept at the facility and shall be readily available for Department review.

3.8.3 Defective lamps or filters shall be replaced before further use of the tanning equipment.

3.8.4 Lamps and bulbs designated for medical use only shall not be used.

PART IV

RECORDS, REPORTS AND INSTRUCTIONS

4.1 PURPOSE AND SCOPE:

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This Part provides for the records and reports to be submitted or maintained by registrants of tanning equipment which employ ultraviolet and other lamps for the purpose of tanning the skin of the human body through the application of ultraviolet radiation.

4.2 CONSUMER WARNING:

4.2.1 Prior to initial exposure, a tanning facility operator shall require that the consumer sign and date a warning statement that the information in Sections 3.3.1, 4.2.3, 4.2.4, 4.2.5, and 4.2.6 has been read and understood, and a tanning facility operator shall require the consumer to complete a detailed medical and skin history information. An operator shall review the warning statement and medical and skin history information prior to the consumer's initial visit or upon any resubmission of this information. The documents must be signed on a consumer's initial visit, and must be renewed at least annually thereafter or maintained continually throughout the consumer's patronage of the facility.

4.2.2 For illiterate or visually impaired persons, the warnings in Sections 4.2.3, 4.2.4, 4.2.5, and 4.2.6 shall be read by an operator in the presence of a witness and the witness and the operator shall sign a statement that the information has been read and understood.

4.2.3 Each consumer shall be warned by the operator as to the potential photosensitizing agents and the operator shall determine if the consumer is using any of these agents to the best of his or her ability. A list of common photosensitizing agents will be provided to all registrants by the Department. The registrant shall have the list of potential photosensitizing agents readily available for review.

4.2.4 Each consumer shall be warned by the operator to consult a physician if the consumer has a history of skin problems or is especially sensitive to sunlight. Documentation of this warning shall be recorded in writing by the operator on the consumer's skin and medical history information.

4.2.5 Upon their initial visit, consumers shall be advised by a tanning equipment operator that tanning indoors and outdoors in the same day, tanning at multiple salons, or other similar occurrences, are hazardous to their health. Documentation of this warning shall be recorded in writing by the operator on the consumer's skin and medical history information.

4.2.6 Upon their initial visit, each consumer shall be warned by the operator to advise the operator of any use of medications. Documentation of this warning shall be recorded in writing by the operator on the consumer's skin and medical history information.

4.3 RECORDS:

4.3.1 All records required to be kept in this section and Section 4.2 shall be maintained for at least two years, or longer if required by any other applicable law, regulation, or any other part of this regulation. The records shall be maintained at the facility and shall be readily available for Department review.

4.3.2 The registrant shall maintain a record of all consumer warning statements given to each consumer as required in Section 4.2.

4.3.3 The registrant shall maintain a record of each consumer's total number of tanning visits, dates of each visits, the durations of each tanning exposures, the room number or name for each tanning visit, and the consumer's skin type.

4.3.4 The registrant shall maintain records ensuring that the requirements of Sections 3.4.3 and 3.4.6 have been met.

4.3.5 Records required by these regulations which are maintained by the registrant on computer systems shall be regularly copied, at least monthly, and updated on storage media other than the hard drive of the computer. An electronic record shall be retrievable as a printed copy.

4.4 REPORT OF INJURY:

4.4.1 The registrant shall submit to the Department a written report of actual or alleged injury from use of the registrant's tanning equipment within five working days after notification thereof. The consumer that is injured or allegedly injured must report the injury within seventy-two (72) hours of the occurrence.

4.4.2 The report shall include the following information that has been obtained to the best ability of the registrant: 1) the name, address and telephone number of the affected individual; 2) the name, location, telephone number, name of operator on duty, and registration number of the tanning facility and identification of the specific tanning equipment involved; 3) the nature of the actual or alleged injury, and any other information relevant to the actual or alleged injury to include the date and duration of exposure; 4) name of attending physician, if applicable, medical attention sought and treatment; 5) copy of all of the individual's medical, skin and exposure history; 6) steps taken to prevent recurrence of future injuries; 7) all information required to be provided by DHEC 0827, Report of Injury; and 8) any other information the Department deems is necessary.

4.4.3 Any records pertaining to or any reports of actual or alleged injury shall be maintained by the registrant and shall be available for review until the Department authorizes their disposal.

4.5 USE OF TANNING EQUIPMENT BY MINORS:

The registrant shall not allow minors to use tanning equipment unless the minor provides a consent form and a statement, described in Section 4.2, signed by the minor's parent or legal guardian while witnessed by an operator or the owner of the tanning facility. The witness shall provide his/her name, signature, title and date on the consent form.

4.6 USERS' INSTRUCTION:

The users' instructions as required by 21 CFR 1040.20 (e) (1) shall be maintained and available for review for each model of tanning equipment used at the tanning facility. The documents shall be kept at the facility and shall be readily available for Department review.

PART V

OPERATOR REQUIREMENTS

5.1 PURPOSE AND SCOPE:

This Part provides for the requirements of the operators of tanning equipment which employ ultraviolet and other lamps for the purpose of tanning the skin of the human body through the application of ultraviolet radiation.

5.2 OPERATOR PRESENCE:

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The registrant shall ensure that the tanning equipment is only operated by an adequately trained operator present at the tanning facility. The adequately trained operator shall meet the requirements of Sections 5.4,-5.5, 5.6, and 5.7.

5.3 OPERATOR CONTROL:

5.3.1 The registrant shall ensure that no operator allow any consumer to use tanning equipment greater than the manufacturer's recommended maximum exposure time(s) in minutes, or the Department approved alternate maximum exposure time in minutes.

5.3.2 If a consumer is accelerated for any valid reason along the manufacturer's recommended exposure schedule, then a formally trained operator shall determine the point or week at which the customer will begin to tan and document in detail on the consumer's records why the consumer was allowed to begin at a greater exposure time than the minimum exposure time for his or her skin type according to the manufacturer's recommended exposure schedule.

5.3.3 The operator shall ensure the tanning equipment is not operated in such a manner so as to cause an overexposure or injury to the consumer.

5.3.4 If the registrant knows or has reason to know that the consumer had tanned less than twenty four hours previously, then the registrant shall not allow that person to tan.

5.3.5 Prior to each use of a tanning device, each consumer shall be instructed by a trained operator regarding the selected exposure time as determined by the operator.

5.3.6 The operator shall ensure that only the consumer using the tanning equipment shall be in the room or area with the tanning equipment while the tanning equipment is in operation.

5.4 OPERATOR TRAINING:

The registrant shall certify that all tanning equipment operators as defined by Section 1.2.8 are formally trained and knowledgeable in the correct operation of the tanning equipment used at the facility to adequately inform and assist each consumer in the proper use of the tanning equipment. Each operator shall be trained in at least the following prior to allowing consumers to tan:

- 1) the requirements of these regulations R.61-106, "Tanning Facilities;"
- 2) the tanning facility operating procedures as approved by the Department;
- 3) the Department's Regulatory Guide;
- 4) proper procedures of the use of and the instruction in use of protective eyewear;
- 5) recognition of injury or overexposure to ultraviolet radiation;
- 6) the tanning equipment manufacturer's procedures for operation and maintenance of the tanning equipment;
- 7) all aspects of the tanning equipment manufacturer's recommended exposure schedule or the Department approved alternate exposure schedule including: the determination of skin type of consumers, determination of duration of exposures, frequency of exposures or visits, spacing of sequential exposures or visits, number of visits allowed per week, and maximum exposure time(s) in minutes;
- 8) the classification and determination of skin type of consumers using the skin types outlined in Appendix A of R.61-106;
- 9) knowledge of potential photosensitizing agents, to include food, cosmetics and medications, and the possibility of photosensitivity and photoallergic reactions;
- 10) proper procedures for sanitizing protective eyewear and tanning equipment;
- 11) emergency procedures to be followed in case of an actual or alleged ultraviolet radiation injury;

- 12) biological effects of ultraviolet radiation, to include the potential acute and long term health effects of ultraviolet radiation;
- 13) the human skin and the tanning process;
- 14) testing and record-keeping requirements and maintenance of records required by R.61-106;
- 15) determination of lamp equivalency;
- 16) the requirements of the federal regulations, 21 CFR 1040.20;
- 17) the types and wavelengths of ultraviolet light;
- 18) general information and characteristics of commercial tanning lamps;
- 19) general features of all types of commercial tanning devices; and,
- 20) the public health reasons for avoiding overexposure and the dangers of overexposure.

5.5 FACILITY SPECIFIC OPERATOR TRAINING:

Each registrant shall provide facility specific tanning equipment operator training. Each operator shall be trained and have the training documented prior to allowing a consumer to tan. The registrant shall document the facility specific training on a form provided by the Department or a similar form. The training shall include, but not be limited to:

- 1) the requirements of the regulations, R.61-106, "Tanning Facilities;"
- 2) the registrant's Department approved facility operating procedures;
- 3) procedures for operation of the registrant's tanning equipment;
- 4) all aspects of the manufacturer's recommended exposure schedule(s) or the Department approved alternate schedule(s), to include the items listed by Section 5.4 (7);
- 5) use of the registrant's consumer warning and skin and medical history system as required by Section 4.2;
- 6) use of the registrant's consumer record keeping system as required by Section 4.3;
- 7) proper procedures of the use of and the instruction in use of the registrant's protective eyewear; and
- 8) proper mixing and use of the registrant's tanning equipment and protective eyewear sanitizer, as applicable.

5.6 FORMAL OPERATOR TRAINING:

5.6.1 The registrant shall allow operation of tanning equipment only by persons who have successfully completed formal tanning equipment operator training courses approved by the Department.

5.6.2 The formal training courses shall cover the topics in Section 5.4.

5.6.3 The Department reserves the right to require tanning equipment operators to attend another tanning equipment operator formal training class if operator competence cannot be adequately demonstrated to the Department or under any other circumstances the Department deems necessary.

5.7 TEMPORARY OPERATOR TRAINING

Facility personnel hired as tanning equipment operators shall have a period of thirty (30) days after the effective date of employment to successfully complete the required formal training. Such persons shall work under the direct supervision of a formally trained operator until they have successfully completed the following training. The temporary operator training shall include documented training in all topics outlined in Sections 5.4 and 5.5. The training provided for Section 5.4 may be accomplished through the use of a Department-approved correspondence course.

5.8 RECORD OF TRAINING:

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The registrant shall maintain a record of operator training required in Sections 5.5, 5.6 and 5.7 readily available for inspection by authorized representatives of the Department.

PART VI

VENDORS

6.1 PURPOSE AND SCOPE:

This Part provides for the registration of persons providing tanning equipment installation, servicing and/or services and persons providing formal training of tanning equipment operators.

6.2 Each person who is engaged in the business of installing or offering to install tanning equipment, or is engaged in the business of furnishing or offering to furnish tanning equipment servicing or services in this State, or provides formal training to tanning equipment operators shall apply for registration of such services with the Department prior to furnishing or offering to furnish any such services. Services may include but shall not be limited to the installation and repair of tanning equipment and associated components, such as bulbs and filters.

6.3 Application for registration shall be completed on forms furnished by the Department and shall contain all information required by the Department as indicated on the forms and accompanying instructions.

6.3.1 Each person applying for registration under this Part shall specify:

6.3.1.1 That he has read and understands the requirements of these regulations; and

6.3.1.2 The training and experience that qualify him to provide the services for which he is applying for registration.

6.4 ISSUANCE OF REGISTRATION APPROVAL DOCUMENT:

6.4.1 Upon determination that an application meets the requirements of this regulation and the application and tanning equipment vendor fees have been paid, the Department shall issue a registration approval document.

6.4.2 The Department may incorporate in the registration approval document, at the time of issuance or thereafter by appropriate rule or order, such additional requirements and conditions with respect to the vendor's receipt, possession, and transfer of tanning equipment as the Department deems appropriate or necessary.

6.4.3 No person shall provide tanning equipment installation, servicing and/or services until the Department has issued the registration approval document.

6.5 TRANSFER OF REGISTRATION APPROVAL:

No registration approval shall be transferred from one person to another person or from one tanning equipment vendor to another tanning equipment vendor.

6.6 REPORT OF CHANGE:

The vendor shall notify the Department in writing before making any change which would render the information contained in the application for registration or the registration approval document no longer accurate.

6.7 PROHIBITED ADVERTISEMENT:

No person, in any advertisement, shall refer to the fact that such person or such person's business is registered with the Department pursuant to the provisions of this regulation, and no person shall state or imply that any activity under such registration has been approved by the Department.

6.8 DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION:

6.8.1 The Department may deny an application or, suspend or revoke a registration or a registration approval document applied for or issued pursuant to this regulation: 1) for any material false statement in the application for registration or in any statement of fact required by provisions of this regulation; or 2) because of conditions revealed by the application or any report, record, inspection or other means which would warrant the Department to refuse to grant a registration approval on an original application; or 3) failure to install or repair tanning equipment so that it meets the requirements of 21 CFR 1040.20; or 4) for failure to pay the fee required in Section 1.11.3 of this regulation; or 5) for failure to correct violations within sixty (60) calendar days from the date of the citation; or 6) for violation of or failure to observe any of the terms and conditions of the registration approval, this regulation, or an order of the Department.

6.8.2 Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, prior to the institution of proceedings for suspension or revocation of a registration approval, the Department shall: 1) call to the attention of the registrant, in writing, the facts or conduct which may warrant such actions; and 2) provide reasonable opportunity for the registrant to demonstrate or achieve compliance with all lawful requirements.

6.8.3 Any person aggrieved by a decision by the Department to deny a registration approval or to suspend or revoke a registration approval after issuance may request a hearing under provisions of the South Carolina Administrative Procedures Act.

6.8.4 The Department may terminate a registration approval upon receipt of a written request for termination from the registrant.

6.9 VENDOR OBLIGATION:

6.9.1 Any person who sells, leases, transfers, lends, assembles, recertifies, upgrades or installs tanning equipment in this State shall notify the Department in writing not later than the tenth day of each month of:

6.9.1.1 The name, address and telephone number of persons who have received this equipment or who have had the equipment recertified or upgraded;

6.9.1.2 The manufacturer, model, and serial number of each piece of tanning equipment transferred, recertified or upgraded; and

6.9.1.3 The date of transfer, recertification or upgrade of each piece of tanning equipment.

6.9.2 Notification to the Department shall be made on DHEC Form 0829.

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6.9.3 No person shall make, sell, lease, transfer, lend, repair, assemble, recertify, upgrade or install tanning equipment, lamps or the supplies used in connection with such equipment unless such supplies and equipment when properly placed in operation and used shall meet the requirements of these regulations and the regulations of 21 CFR 1040.20.

6.10 REQUIREMENTS FOR FORMAL TRAINERS OF TANNING EQUIPMENT OPERATORS (TRAINING SERVICES):

6.10.1 Vendors of tanning equipment operator training services shall meet the registration requirements of this section. Training services vendors are required to furnish a copy of all training materials, to include a sample examination and answers, to the Department for review and comment along with the application for registration and prior to offering operator training courses. The materials submitted for review shall include, but not be limited to, the credentials of the trainers and persons compiling the training materials, a copy of the classroom curriculum and copies of written materials to be received by the trainees.

6.10.2 Any changes made to the training course shall be submitted in writing to the Department and approved by the Department prior to its use.

6.10.3 Training services vendors shall maintain records of course completion and test results until the Department authorizes their disposal. These records shall be available for Department review upon request.

6.10.4 A list of persons successfully completing the operator training shall be furnished to the Department in writing within thirty days of the training course. The list shall include, but not be limited to: the name of the person(s) conducting the training class, and a list of persons trained with test scores and the tanning facility name and address (if applicable).

6.10.5 Each formal training class shall be conducted in a classroom setting and shall:

1) Be at least six hours in length, excluding items such as registration, lunch, marketing, profit-making strategies, advertising or taking the test;

2) Have a test consisting of at least fifty questions. The passing score shall be correct answers for at least 75% of the questions;

3) Include written material which covers the required subjects, such as training manual; audio-visual presentations which cover the required subjects, such as slides, overheads, or videos; current copies of the Department's regulations, R.61-106; current copies of the Department's Tanning Facility Operating Procedures; current copies of the Department's Regulatory Guide; and a questions and answer period for trainees.

6.10.6 The required subjects shall include, but not be limited to:

6.10.6.1 the requirements of these regulations, R.61-106 "Tanning Facilities;"

6.10.6.2 the Department's Tanning Facility Operating Procedures;

6.10.6.3 the Department's Regulatory Guide;

6.10.6.4 proper procedures for the use and the instruction in use of protective eyewear;

6.10.6.5 recognition of injury or overexposure to ultraviolet radiation;

6.10.6.6 examples of tanning equipment manufacturer's procedures for operation and maintenance of tanning equipment;

6.10.6.7 examples and detailed explanations of tanning equipment manufacturer's recommended exposure schedules;

6.10.6.8 the classification and determination of skin type of consumers using the skin types outlined in Appendix A of R.61-106;

6.10.6.9 potential photosensitizing agents, to include food, cosmetics and medications, and the possibility of photosensitivity and photoallergic reactions;

- 6.10.6.10 proper procedures for sanitizing protective eyewear and tanning equipment;
- 6.10.6.11 emergency procedures to be followed in case of an actual or alleged ultraviolet radiation injury;
- 6.10.6.12 biological effects of ultraviolet radiation, to include the potential acute and long term health effects of ultraviolet radiation;
- 6.10.6.13 the human skin and the tanning process;
- 6.10.6.14 testing and record-keeping requirements and maintenance of records required by R.61-106;
- 6.10.6.15 determination of lamp equivalency and examples of lamp equivalency documents;
- 6.10.6.16 the requirements of the federal regulations, 21 CFR 1040.20;
- 6.10.6.17 the types of and wavelengths of ultraviolet light;
- 6.10.6.18 general information and characteristics of commercial tanning lamps;
- 6.10.6.19 general features of all types of commercial tanning devices; and,
- 6.10.6.20 the public health reasons for avoiding overexposure and the dangers of overexposure.

6.10.7 The Department shall receive written notification at least five days prior to a prescheduled training class being conducted and at least twenty-four (24) hours notification prior to a non-prescheduled, in-house (on-site) class being conducted. The notification shall include, but not be limited to: the name of the training vendor; the name of the instructor(s) of the class; the date, time, city location and address location of each class.

6.10.8 The Department shall receive written notification at least five days prior to a training class being cancelled. The notification shall include, but not be limited to: the name of the training vendor; the name of the instructor(s) of the class; the date, time, city location and address location of the class; and, the reason for cancellation of the class.

6.10.9 The Department reserves the right to audit any training class without notice to the training vendor.

6.11 REQUIREMENTS FOR TRAINERS OF TEMPORARY TANNING EQUIPMENT OPERATORS

6.11.1 Providers of temporary tanning equipment operator training services shall meet the registration requirements of this section. Training services vendors are required to furnish a copy of all training materials, to include a sample examination and answers, to the Department for review and comment along with the application for registration, prior to offering the temporary tanning equipment operator training materials. The materials submitted for review shall include, but not be limited to, the credentials of the persons compiling the training materials, a bibliography of references for the material, and copies of all written materials to be received by the trainees.

6.11.2 Any changes made to the training course shall be submitted in writing to the Department and approved by the Department prior to its use.

6.11.3 Each temporary tanning equipment operator course shall:

6.11.3.1 Have a test consisting of at least fifty questions. The passing score shall be correct answers for at least 75% of the questions;

6.11.3.2 Include written material which covers all of the required subjects outlined in Section 6.10.6;

6.11.3.3 Include a current copy of the Department's regulations, R.61-106; a current copy of the Department's Tanning Facility Operating Procedures; a current copy of the Department's Regulatory Guide; a current copy of DHEC 0827, Report of Injury; a current copy of DHEC 0828, Consumer Statement; and a list of potentially photosensitizing medications and substances.

APPENDIX A SKIN TYPES

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Skin Type I:

- 1) Burns easily and severely, peels and does not tan.
- 2) Has bright white skin, blue or green eyes, red hair and freckles.
- 3) Indoor and outdoor tanning not recommended.

Skin Type II:

- 1) Burns easily and severely, peels, tans minimally or lightly.
- 2) Unexposed skin is white, blue or brown eyes, red or blond hair and freckles.

Skin Type III:

- 1) Burns moderately and tans average.
- 2) Unexposed skin is white, brown eyes, dark hair.

Skin Type IV:

- 1) Burns minimally, tans easily and above average with each exposure (exhibits IPD-immediate pigment darkening).
- 2) Unexposed skin is light brown, dark eyes, dark hair.

Skin Type V:

- 1) Rarely burns, tans easily and subsequently, always exhibits IPD.
- 2) Unexposed skin is brown, dark eyes, dark hair.

Skin Type VI:

- 1) Rarely burns, tans profusely, always exhibits IPD.
- 2) Unexposed skin is black, dark eyes, dark hair.

Fiscal Impact Statement:

There will be minimal cost to the state, its political subdivisions, and to the regulated community with the implementation of these amendments. No additional funding is needed and existing staff and resources will be utilized to implement this amendment to the regulation.

Statement of Need and Reasonableness:

The changes are needed to implement the Board's directive for the posting of tanning facility inspection results, to add and revise definitions, delete requirements duplicated in other areas of the regulations, clarify and strengthen existing requirements, add new requirements that will promote greater health and safety to the public, delete requirements that are no longer applicable, reasonable or necessary, and make stylistic and grammatical changes. The changes are needed because the regulations have not been revised since they were approved by the Board on March 14, 1991. The experience and knowledge gained by the staff since this date is one factor that has necessitated the changes.

The changes are reasonable because they will be implemented with existing staff. Many of the changes are already items currently checked on regulatory inspections, but needed strengthening or further clarification, such

as, adherence to operating procedures and more comprehensive sanitation requirements. Many items are currently being implemented by policy, such as requirements for providers of formal training, and some record keeping and reporting requirements. Several items reduce the burden to the registrants, such as: allowing registrants thirty days to report changes, such as an addition or deletion of tanning equipment, instead of immediate notification; deleting the requirement to report addition or deletion of tanning equipment operators; and, not requiring consumers' personal protective eyewear to be inspected with each visit if the registrant provides protective eyewear. Items were added to further protect the health and safety of the public, such as requirements for remote override timers on all tanning equipment and requiring timer accuracy to be checked prior to consumer use of the tanning equipment.

The expected benefits of the regulatory changes are increased health and safety of the public, increased accountability of the regulated community to the consumers they serve and to the Department, increased education of the regulated community and their consumers, and relief of some burdensome requirements to the registrants.

DESCRIPTION OF REGULATION: R.61-106, Tanning Facilities

Purpose: Amendment of R.61-106, Tanning Facilities, incorporates the Board's directive to require tanning facility registrants to post the results of the Department's most recent regulatory inspection. The regulations will be substantially revised to make them more comprehensive, delete some unnecessary requirements, clarify some requirements, and add additional requirements in areas already receiving attention during inspections. The amendments will clarify, strengthen, and improve the existing regulation. Specific areas the Department seeks to address in the regulations include: reorganization of the civil penalty schedule into a matrix system; addition of more specific requirements for the formal training of tanning equipment operators; provide for alternative exposure schedules; and, require the installation of remote, override timers.

Legal Authority: S.C. Code Sections 13-7-10, 13-7-40 and 13-7-45 et seq. and Supplement

Plan for Implementation: Upon approval of the General Assembly and publication in the State Register, these amendments will be incorporated into R.61-106 and will be implemented by providing the regulated community with copies of the regulation and a regulatory guide. The Department will also conduct informational forums in several locations throughout the state in order to explain the regulatory changes.

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

The changes are needed to implement the Board's directive for the posting of tanning facility inspection results, to add and revise definitions, delete requirements duplicated in other areas of the regulations, clarify and strengthen existing requirements, add new requirements that will promote greater health and safety to the public, delete requirements that are no longer applicable, reasonable or necessary, and make stylistic and grammatical changes. The changes are needed because the regulations have not been revised since they were approved by the Board on March 14, 1991. The experience and knowledge gained by the staff since this date is one factor that has necessitated the changes.

The changes are reasonable because they will be implemented with existing staff. Many of the changes are already items currently checked on regulatory inspections, but needed strengthening or further clarification, such as, adherence to operating procedures and more comprehensive sanitation requirements. Many items are currently being implemented by policy, such as requirements for providers of formal training, and some record keeping and reporting requirements. Several items reduce the burden to the registrants, such as: allowing registrants thirty days to report changes, such as an addition or deletion of tanning equipment, instead of immediate notification; deleting the requirement to report addition or deletion of tanning equipment operators; and, not requiring consumers' personal protective eyewear to be inspected with each visit if the registrant provides protective eyewear. Items were added to further protect the health and safety of the public, such as requirements for remote

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override timers on all tanning equipment and requiring timer accuracy to be checked prior to consumer use of the tanning equipment.

The expected benefits of the regulatory changes are increased health and safety of the public, increased accountability of the regulated community to the consumers they serve and to the Department, increased education of the regulated community and their consumers, and relief of some burdensome requirements to the registrants.

DETERMINATION OF COSTS AND BENEFITS: There will be minimal cost to the state, its political subdivisions, and to the regulated community with the implementation of these amendments. No additional funding is needed and existing staff and resources will be utilized to implement this amendment to the regulation. The Department will provide the forms needed for posting of Department inspections. The regulated community will not be burdened with the submission of additions or deletions of tanning equipment operators to the Department. An estimated less than five percent of the regulated community will be required to install remote, override timers at the estimated cost of one hundred fifty dollars each. However, the regulation amendments provide one year from the effective date of the regulations to implement this requirement. The public will benefit from the amendments due to the opportunity to make a more informed decision about tanning from the review of violations cited that may potentially affect their health and safety. Requiring remote override timers will also reduce the potential for overexposure to the consumers by prohibiting their ability to reset the timers.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no effect upon the environment. The amendments will have a positive effect on the public health of the citizens of the state due to increased awareness of violations at tanning facilities from posting of inspections. The amendments will also strengthen and clarify health and safety aspects of the regulations.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: There will be no detrimental effects on the environment if these changes are not implemented. The public health of the citizens would not be reduced over that which is present with the current regulations, but it would be increased with more stringent requirements in some areas, such as: awareness of health and safety violations at the tanning facilities they patronize; prevention of consumers from increasing their exposure time due to inaccessibility to the timer; and, more stringent sanitation requirements.

Document No. 2488

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTORS' LICENSING BOARD
CHAPTER 29**

Statutory Authority: 1976 Code Sections; 40-11-60, 40-11-260, 40-11-410 and 40-1-70

Synopsis:

The South Carolina Contractors' Licensing Board is amending current regulations which will add an examination requirement for a boiler classification; change process piping and public electrical utility classifications to conform with computerized records; specify a form for submission of owner-prepared financial statements; clarify the General Contractors-Highway classification.

Instructions: Amend current regulations, by amending Regulations 29-1, 29-10, 29-11, & 29-12 as it appears in the text below.

Text:

Section 29-1. Examination Requirements; Classifications.

The following classifications require passage of a technical examination, approved by the board:

- (1) building:
 - (a) building contractors examination, license groups one, two, and three;
 - (b) general contractors examination, license groups four and five;
- (2) bridges;
- (3) grading;
- (4) asphalt paving;
- (5) concrete paving;
- (6) concrete;
- (7) marine;
- (8) pre-engineered metal buildings;
- (9) public utility electrical;
- (10) structural framing;
- (11) general roofing;
- (12) specialty roofing;
- (13) swimming pools;
- (14) wood frame structures;
- (15) pipe lines;
- (16) water and sewer lines;
- (17) water and sewer plants;
- (18) packaged equipment;
- (19) air conditioning;
- (20) electrical;
- (21) heating;
- (22) lightning protection systems;
- (23) plumbing;
- (24) pressure and process piping;
- (25) refrigeration;
- (26) boilers;
- (27) such other classifications as the board may designate.

Section 29-10. Mechanical Contractors Licensure Requirements.

(A) Any mechanical contractor with a process piping classification that was licensed prior to April 1, 1999, may install boilers and engage in any activity involving boiler maintenance, repair, or inspection. Any mechanical contractor issued an initial license with a process piping classification on or after April 1, 1999, may not engage in any boiler work requiring a license unless he has a mechanical contractors heating classification.

ensed prior April 1, 1999, will be listed as a 1P process piping license classification.

(C) Licensees licensed on or after April 1, 1999, will be listed as a 2P process piping license classification.

(D) Any general contractor with a public electrical utility classification that was licensed prior to April 1, 1999, may install athletic field lighting, stadium lighting, or lighting which is on public easements or rights-of-way. Any general contractor issued an initial license with a public electrical utility classification on or after April 1, 1999, may not engage in this work.

(E) Licensees licensed prior to April 1, 1999, will be listed as a 1U public electrical utility license classification.

(F) Licensees licensed on or after April 1, 1999, will be listed as a 2U public electrical utility license classification.

(G) Any contractor licensed under (B) and (E) above that has not actively maintained their license, or continuously employed a properly qualifying party for the entity, or whose license has been canceled or revoked shall not be eligible thereafter to obtain a 1P or 1U classification.

(H) Any qualifying party listed under the 1P or 1U classification who leaves employment of the entity he is currently qualifying, shall not be eligible thereafter to obtain 1P or 1U classification.

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Section 29-11. Owner-Prepared Financial Statement.

The latest revision of a financial balance sheet form (FBS) issued by the Department must be completed by an owner filing an owner-prepared financial statement. The Department will furnish this form to all applicants for initial licensing or renewal of license in the applicable group limitations. The form must contain assets, liabilities and total net worth of the licensee, in addition to other pertinent information requested by the Department.

Section 29-12. General Contractors-Highway Classification.

Any contractor that has been issued all of the following license classifications referenced in Section 40-11-410(2):

- (1) Bridges; and
- (2) Concrete Paving; and
- (3) Asphalt Paving; and
- (4) Grading, and

(5) Highway incidental classification referenced in Section 40-11-410(2)(e) will be designated as HIGHWAY (HY) on the license card and license certificate.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any political subdivision.

Document No. 2467
DEPARTMENT OF LABOR, LICENSING AND REGULATION
MANUFACTURED HOUSING BOARD
CHAPTER 19

Statutory Authority: 1976 Code Section 40-1-50, 40-29-50 and 40-29-110

Synopsis:

This amendment ensures that the fee charged for examination by the Board will cover the costs of the examinations provided by the vendor, Experior Assessments, Inc.

Instructions: Amend current regulations, by amending Regulation 19-425.26 (C) as it appears in the text below.

Text:

19-425.26. Fees.

- C. When applicable, the examination fee is not to exceed fifty dollars (\$50.00).

Fiscal Impact Statement: There will be no additional cost incurred to the State or any political subdivision.

Document No. 2465
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS
Chapter 81

Statutory Authority: 1976 Code Sections 40-47-20; 40-1-70

Synopsis:

The Board of Medical Examiners amended Regulation 81-12 to require persons whose practice authorizations are revoked to surrender their wall certificates and wallet cards to the Board Administrator for destruction. This new requirement is for physicians, physician assistants, respiratory care practitioners and acupuncturists.

Instructions: Amend current regulations, by amending Regulation 81-12 as it appears in the text below.

Text:

81-12. Effect of Discipline.

A person whose license, registration, or certification has been revoked shall never be readmitted to practice in this State.

A person who, having voluntarily surrendered his license, registration or certification has been thereafter reinstated in the manner hereinafter provided, or who, having been suspended for an indefinite period, has been thereafter reinstated in the manner hereinafter provided, shall have his license, registration or certification revoked upon being found guilty of subsequent misconduct which would warrant a suspension of at least one year.

Whenever a license, registration or certification is suspended or any other action "short of revocation or suspension" is taken, the Board may require the licensee, registrant or holder of a certificate to give evidence of satisfactory compliance therewith before reinstating his license, registration or certification.

A person whose license, registration or certificate has been revoked shall, within fifteen days after the effective date of the revocation, surrender his or her wall certificate and wallet card to the Board Administrator. The wall certificate and wallet card shall be destroyed by the Board Administrator.

Fiscal Impact Statement: There will be no cost incurred by the State or any political subdivision.

Document No. 2466
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS

Chapter 81

Statutory Authority: 1976 Code Sections 40-47-20; 40-1-70

Synopsis:

The Board of Medical Examiners amended Regulation 81-90(B)(5) to permit licensure by endorsement of osteopathic physicians who have successfully completed a written examination of another state medical, osteopathic, or composite board prior to 1976, if the applicant also meets all other requirements approved by the Board.

Instructions: Amend current regulations, by amending Regulation 81-90(B)(5) as it appears in the text below.

Text:

81-90. Requirements For Permanent License.

Requirements for a permanent license to practice medicine in South Carolina include the following educational, examination, postgraduate residency training and other requirements:

A. With respect to the educational requirements for licensure, applicants must document to the satisfaction of the Board:

- (1) Graduation from a medical school located in the United States, its territories or possessions, or Canada which is accredited by the Liaison Committee on Medical Education or other accrediting body approved by the Board, or
- (2) Graduation from a school of osteopathic medicine located in the United States, its territories or possession, or Canada accredited by the American Osteopathic Association or other accrediting body approved by the Board, or
- (3) Graduation from a medical school located outside the United States or Canada.
 - (a) Graduates of medical schools located outside of the United States or Canada must possess a Standard Certificate from the Education Commission on Foreign Medical Graduates (ECFMG), or

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(b) Document successful completion of a Fifth Pathway program and be currently Board Certified by a Specialty Board recognized by the American Board of Medical Specialties or the American Osteopathic Association.

(c) Notwithstanding 81-90 A(3)(a) or (b), the ECFMG or Fifth Pathway requirement may be waived at the discretion of the Board if the applicant is to have full time academic faculty appointment at the rank of Associate Professor or greater at a medical school in South Carolina.

B. With respect to the examination requirements for licensure, applicants must document to the satisfaction of the Board:

(1) Successful completion of all parts of the National Board of Medical Examiners; or

(2) Successful completion of all parts of the National Board of Osteopathic Medical Examiners; or

(3) Successful completion of the Federation Licensing Exam (FLEX) based on standards established by the Board; or

(4) Successful completion of the United States Medical Licensing Examination (USMLE) based on standards established by the Board; or

(5) Successful completion of a written state examination of another State Medical, osteopathic, or Composite Board prior to 1976 if applicant also meets additional requirements approved by the Board, such as certification by a Specialty Board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(6) Successful completion of combinations of the FLEX, National Board and USMLE acceptable to the Composite Committee of the USMLE and approved by the Board.

C. In addition to the examination requirements set forth in 81-90 B, if an applicant has not documented within ten years of the date of a completed application to the Board the passing of one of the following:

(1) National Board of Medical Examiners examination; or

(2) National Board of Osteopathic Examiners examination; or

(3) FLEX; or

(4) SPEX; or

(5) Certification or recertification by a Specialty Board recognized by either the American Board of Medical Specialties or the American Osteopathic Board, then the applicant, in addition to meeting all other licensure requirements, must pass the Special Purpose Examination (SPEX). A passing score on this examination is 75 or better. The SPEX requirement is in addition to all other requirements. The fee for the SPEX examination shall not exceed \$500.00.

D. The additional examination required set forth in 81-90 C shall be waived if the applicant is to be employed full time by the South Carolina Department of Corrections, South Carolina Department of Health and Environmental Control, South Carolina Department of Mental Health or South Carolina Department of Mental Retardation. A license issued pursuant to this waiver is revoked immediately if the individual leaves that full-time employment or acts outside the scope of employment within the Department. This waiver of the additional examination requirement of 81-90 C does not apply where the applicant is to provide services under a contract for the State, or if the applicant is to provide services for which there is an expectation of payment, is payment for services, or should have been payment from a source other than the salary the physician receives from the State.

E. For FLEX examinations taken prior to June 1, 1985, the applicant, in one sitting, must have attained a score of at least 75 each day and a FLEX weighted average of 75 or better; applicants licensed in other states who have a FLEX weighted score of 75 or more and no daily score below 70 may be considered on a discretionary basis by the Board if they are currently certified by an A.O.A. or A.B.M.S. recognized Specialty Board and meet all other requirements for licensure.

F. For FLEX examinations taken after June 1, 1985, the applicant must pass both FLEX Component I and FLEX Component II. A score of 75 or better is a passing score. An applicant must achieve a score of 75 or better on both FLEX Component I and FLEX Component II. An applicant must pass both Component I and Component II within five years of the applicant's first taking of any FLEX examination.

G. For the United States Medical Licensing Examination, the applicant must pass Step 1, Step 2 and Step 3. A score of 75 or better on each Step is considered passing.

(1) All Steps of the USMLE must be passed within seven years of taking Step 1 for the first time.

(2) The results of the first three takings of each Step examination will be considered by the Board. The Board has discretion whether to consider the results from a fourth taking of any Step. It is the burden of the applicant to present special and compelling circumstances why a result from a fourth taking should be considered. Such circumstances may include, but are not limited to the applicant's additional medical education or training, the applicant's score on the third taking or other special or compelling circumstances. Under no circumstances shall the Board consider results received after the fourth taking of any Step.

H. With respect to postgraduate residency training requirements, the following standards shall apply:

(1) Graduates of approved medical or osteopathic schools located in the United States or Canada must have a minimum of one year of postgraduate residency training approved by the Board.

(2) Graduates of medical schools located outside of the United States or Canada must have a minimum of three years of progressive postgraduate residency training approved by the Board, except that such graduates who have been licensed in another state for ten years or more need only document one year of postgraduate residency training approved by the Board.

(3) The Board has the discretion of accepting a full time academic appointment at the rate of Associate Professor or greater in a medical or osteopathic school in the United States as a substitute for, and in lieu of postgraduate training. Each year of this academic appointment may be credited as one year of postgraduate training for purposes of the Board's postgraduate training requirements.

(4) For purposes of satisfying postgraduate training requirements, the Board accepts postgraduate training in the United States approved by the Accreditation Council on Graduate Medical Education, and postgraduate training in Canada approved by the Royal College of Physicians and Surgeons.

I. An applicant shall be denied licensure if the individual has committed acts or omissions which are grounds for disciplinary action as set forth in Section 40-47-200, Code of Laws of South Carolina, 1976, as amended.

J. An applicant must file a completed application, with required supporting documentation, on forms provided by the Board.

K. The non-refundable application fee for a permanent license shall not exceed \$500.00.

Fiscal Impact Statement: There will be no cost incurred by the State or any political subdivision.

Document No. 2437

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS**

Chapter 81

Statutory Authority: 1976 Code Sections 40-47-20 and 40-47-590

Synopsis:

The Board of Medical Examiners is drafting regulations in order to conform with the recent amendments to the South Carolina Respiratory Care Act. The regulations will implement new statutory provisions which were enacted to establish a system of licensing, regulation, and discipline for respiratory care practitioners.

Instructions: Amend current regulations, by replacing them in their entirety with the new text as it appears below.

Text:

81-200. Definitions.

(1) "Qualified Physician Sponsorship" is defined as the existence of a physician permanently licensed in the State with special interest and knowledge in the diagnosis, treatment, and assessment of respiratory problems and assumes the responsibility for supervising all tasks and procedures performed by respiratory care practitioners in the home care of cardiopulmonary patients. The physician sponsor need not be physically present when the respiratory care practitioner is performing respiratory care but must be readily accessible and physically available to the respiratory care practitioner for appropriate consultation.

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(2) "Public Notification" is defined as written communication conducted by the Department of Labor, Licensing and Regulation to all current and potential providers, employers, or consumers of respiratory care regarding the statutory and regulatory requirements for the practice of respiratory care. Public notification shall include communication with all health care facilities, hospitals, skilled nursing facilities, rehabilitation facilities, nursing homes, clinics, sleep laboratories, physicians offices, home care providers, and durable medical equipment suppliers. After notification through the *State Register*, entities will have ninety (90) days from the date of notification to provide written documentation regarding compliance with the statute and regulations.

81-201. Provisional Licensing Requirements.

(1) All respiratory care practitioners in this State certified as of January 1, 1999, will be issued a permanent license within ninety (90) days of the approval of regulations. Any pending disciplinary action, fines, or probationary status will carry forward and remain in effect until final disposition by the committee and board.

(2) Provisional licenses will be issued to individuals who provide evidence that they are practicing respiratory care in November and December of 1998 but cannot meet the professional education and examination requirements. Application for a provisional license must be made within ninety (90) days after public notification by the Department of Labor, Licensing and Regulation.

(3) A provisional license shall remain valid for a period not to exceed three (3) years from the date of issuance of the provisional license and be subject to annual renewal, continuing education and medical direction requirements. When a provisional licensee fails to meet statutory or regulatory requirements, the provisional license is immediately revoked by the board and the individual is no longer eligible to apply for further provisional licenses.

81-202. Continuing Education Requirements.

As a specific condition for the annual renewal of a permanent or provisional license, each licensed respiratory care practitioner must document the completion of at least fifteen (15) hours of continuing education within the twelve (12) month period prior to the March 1 annual renewal date. These continuing education hours must be approved or sponsored by one of the following organizations:

- (1) American Association for Respiratory Care, Inc. or its sponsoring organizations;
- (2) American Heart Association;
- (3) the Society for Critical Care Medicine;
- (4) American Lung Association;
- (5) South Carolina Society for Respiratory Care;
- (6) Allied Health Education Centers of the South Carolina Consortium of Community Teaching Hospitals; or
- (7) Any other institution, educational medium or organization approved by the board.

81-203. Competency Requirements for the Provision of Respiratory Care by Non-RCPs.

(1) Non-RCP's providing respiratory care, regardless of care setting or demographics, shall successfully complete formal training and demonstrate initial competency prior to assuming those duties. Formal training is defined as a supervised, deliberate and systematic continuing educational activity intended to develop new proficiencies with an application in mind. Formal training shall be approved by the board and include supervised didactic, laboratory and clinical activities as well as documentation of competence through a post-testing mechanism. Qualifications of the faculty and educational program must be approved by the medical director. The board must be notified of the intent to medically delegate the practice of respiratory care to non-RCP's prior to implementation of the program or practice.

(2) Certified Registered Nurses of Anesthesia (CRNA's) and Certified Paramedical and Emergency Medical Technicians (EMT's) are exempt from this regulation so long as they are certified or licensed by the State and do not hold themselves out as respiratory care practitioners or practice respiratory care.

(3) Registered Polysomnographic Technologists (RPSGT's) practicing in an accredited sleep medicine facility are exempt from this regulation so long as they are practicing under physician direction and do not hold themselves out as respiratory care practitioners or practice respiratory care.

81-204. Principles of Medical Ethics.

- (1) A respiratory care practitioner shall be dedicated to providing competent respiratory care with compassion and respect for human dignity.
- (2) A respiratory care practitioner shall deal honestly with patients and colleagues, and strive to expose those respiratory care practitioners deficient in character or competence, or who engage in fraud or deception.
- (3) A respiratory care practitioner shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- (4) A respiratory care practitioner shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidence within the constraints of the law.
- (5) A respiratory care practitioner shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public.

81-205. Reporting of Misconduct.

All employers of respiratory care practitioners shall report to the board, within thirty (30) days, any instances of misconduct leading to suspension or involuntary discharge. Misconduct is defined in "Grounds for Discipline" in Section 40-47-630.

81-206. Respiratory Care Practitioner Fees and Renewal.

- (1) The following schedule of fees shall apply to Respiratory Care Practitioners:
 - (a) Application for permanent license\$80
 - (b) Application for provisional license\$80
 - (c) Annual renewal of permanent license\$40
 - (d) Annual renewal of provisional license\$40
 - (e) Limited license\$40
 - (f) Renewal of limited license\$40
 - (g) Upgrade of limited or provisional license to permanent\$40

(2) All respiratory care practitioners with a permanent or provisional license must annually renew that license on or before March 1 of each year. If the respiratory care practitioner fails to timely renew, a penalty fee of ten dollars (\$10) per month shall be levied in addition to the renewal fee. If the respiratory care practitioner has not renewed the license on or before May 31, that license shall be deemed inactive. A respiratory care practitioner may request and be granted inactive status if that individual is no longer practicing respiratory care in this State.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any political subdivision.

Resubmitted February 4, 2000

Document No. 2378
DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
BOARD OF OCCUPATIONAL THERAPY
 CHAPTER 94

Statutory Authority: 1976 Code Section 40-36-10, et seq.

Synopsis:

The Board of Occupational Therapy is considering drafting regulations to supplement its recently enacted practice act. The proposed regulations add definitions of "continuing education" and "contact hour" and addresses the election of officers of the Board and frequency of Board meetings. The proposed regulations also establish requirements for licensure of occupational therapists and occupational therapy assistants, endorsement, and reactivation of inactive or lapsed licenses. Further requirements include the addition of sixteen (16) contact

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hours of continuing education for occupational therapists and occupational therapy assistants. Finally, the proposed regulations establish fees and adopt a code of ethics.

Instructions: Amend existing regulations by repealing them in their entirety and replacing them with the new text as it appears below.

Text:

Article 1 Definitions.

94-01. Definitions.

Definitions found in Section 40-36-20 apply to this chapter.

(1) "Continuing education" means an organized educational program designed to expand a licensee's knowledge base beyond the basic entry-level educational requirements for occupational therapists and occupational therapy assistants. Course content must relate to health care whether the subject is research, treatment, documentation, education, or management.

(2) "One contact hour" is fifty (50) minutes of instruction or organized learning.

Article 2 Officers of the Board; Meetings.

94-02. Officers of Board.

At the first meeting of each calendar year, the Board shall elect from among its members a chairman, vice-chairman, and other officers as the Board determines necessary.

94-03. Meetings.

(1) The Board shall meet at least two (2) times a year and at other times upon the call of the chairman or a majority of the Board members.

(2) A majority of the members of the Board constitutes a quorum; however, if there is a vacancy on the Board, a majority of the members serving constitutes a quorum.

(3) Board members are required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the Board as provided in Section 1-3-240.

Article 3 Licensing provisions.

94-04. General Licensing Provisions for Occupational Therapists.

An applicant for initial licensure as an occupational therapist must:

(1) be a graduate of an occupational therapy educational program approved by the Board; and

(2) submit proof satisfactory to the Board of successful completion of a minimum of six (6) months of supervised field experience at a facility approved by the educational institution where the applicant met the academic requirements; and

(3) submit an application on a form approved by the Board, along with the required fee; and

(4) pass an examination approved by the Board; and

(5) submit proof satisfactory to the Board that the applicant is in good standing with the National Board for Certification in Occupational Therapy (NBCOT) or other Board-approved certification program.

94-05. General Licensing Provisions for Occupational Therapy Assistants.

An applicant for initial licensure as an occupational therapy assistant must:

(1) be a graduate of an occupational therapy assistant program approved by the Board; and

(2) submit proof satisfactory to the Board of successful completion of a minimum of two (2) months of supervised field experience at a facility approved by the educational institution where the applicant met the academic requirements; and

- (3) submit an application on a form approved by the Board, along with the required fee; and
- (4) pass an examination approved by the Board; and
- (5) submit proof satisfactory to the Board that the applicant is in good standing with the National Board for Certification in Occupational Therapy (NBCOT) or other Board-approved certification program.

94-06. Licensure by Endorsement.

An applicant for licensure as an occupational therapist or occupational therapy assistant by endorsement must:

- (1) hold a current, active, and unrestricted license under the laws of another state or territory that had requirements that were, at the date of licensure, equivalent to the requirements in effect at the time of application in South Carolina; and
- (2) submit proof satisfactory to the Board of current certification in good standing with the National Board for Certification in Occupational Therapy (NBCOT) or other Board-approved certification program; and
- (3) submit an application on forms approved by the Board, with the required fee.

94-07. Reactivation of Inactive or Lapsed Licenses.

(1) An occupational therapist or occupational therapy assistant whose license has been inactive or lapsed for three (3) years but less than five (five) years may reactivate the license by applying to the Board, demonstrating evidence satisfactory to the Board on a form approved by the Board of five hundred (500) hours of clinical practice under the on-site supervision of an occupational therapist, and paying the reactivation fee.

(2) An occupational therapist or occupational therapy assistant whose license has been inactive or lapsed for five (5) years but less than ten (10) years may reactivate the license by applying to the Board, demonstrating evidence satisfactory to the Board of no less than seven hundred fifty (750) hours under the on-site supervision of an occupational therapist licensed in this State, successful completion of a course(s) approved by the Board, and paying the reactivation fee.

(3) An occupational therapist or occupational therapy assistant whose license has been inactive or lapsed for ten (10) years or more may reactivate the license by applying to the Board, demonstrating evidence satisfactory to the Board of no less than one thousand (1000) hours under the on-site supervision of an occupational therapist licensed in this State, successfully passing an examination administered or approved by the Board, and paying the reactivation fee.

Article 4 Continuing Education.

94-08. Continuing Education.

Continuing education requirements become effective upon approval by the Governor and must first be reported beginning in 2003 and thereafter.

(1) Every licensed occupational therapist and occupational therapy assistant shall earn sixteen (16) contact hours of acceptable continuing education credit per biennium year. Of the sixteen (16) contact hours, eight (8) must be related to direct patient care. The remaining eight (8) contact hours may be in any area directly related to health care, subject to Board approval, including, but not limited to supervision, education, documentation, quality assurance, and administration.

(2) Standards for approval of continuing education. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:

- (a) it constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and
- (b) it pertains to common subjects or other subject matters which integrally relate to the practice of occupational therapy; and
- (c) it is conducted by individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program and is accompanied by a paper, manual, or outline which substantively pertains to the subject matter of the program and reflects program schedule, including:
 - (i) fulfilling stated program goals or objectives, or both;

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(ii) providing proof of attendance to include original certificate with participant's name, date, place, course title, presenter(s), and number of program contact hours; and

(d) the Board will not grant prior approval but each licensee will be responsible for ensuring that each course submitted for continuing education credit meets these standards.

(3) Acceptable professional continuing education activities include any activity relevant to the practice of occupational therapy that can be deemed to update or enhance knowledge and skills required for competent performance beyond entry level. Such activities include in-service education (limited to four (4) hours), conferences, workshops, seminars, and formal academic education.

(4) Instructors may receive up to eight (8) contact hours per biennial year of continuing education credit for preparing and teaching courses within the scope of practice without prior approval of the Board. Instructors shall only receive credit for teaching one (1) time per course per renewal period.

(5) Report Requirements:

(a) reports shall be submitted on forms provided by the Board. The Board shall routinely distribute its continuing education report forms with the biennial renewal notice; and

(b) by signing the biennial report of continuing education, the licensee signifies that the report is true and accurate; and

(c) licensees shall retain original corroborating documentation of their continuing education courses and official transcripts of college course work with a passing grade of C or better from the beginning date of the licensure period.

(6) Audit of continuing competency:

(a) each licensee shall be responsible for maintaining sufficient records in a format determined by the Board; and

(b) these records shall be subject to a random audit by the Board to assure compliance with this section; and

(c) the Board may audit a percentage of the continuing education reports.

(7) In the event of denial, in whole or part, of credit for continuing education activity, the licensee shall have the right to request a hearing in accordance with the Administrative Procedures Act.

Article 5

Fees.

94-09. Fees.

Fees are as follows:

- | | |
|--|---|
| (1) Application fee | |
| (a) occupational therapist | \$135.00 |
| (b) occupational therapy assistant | \$115.00 |
| (2) Biennial license renewal | |
| (a) occupational therapist | \$100.00 |
| (b) occupational therapy assistant | \$ 80.00 |
| (3) Late Renewal Penalty (per day-not to exceed 30 days) | \$ 10.00 |
| (4) Reactivation (Inactive to Active) | |
| (a) occupational therapist | \$ 25.00 per year of inactivity
not to exceed \$300 +
renewal fee |
| (b) occupational therapy assistant | \$ 20.00 per year of inactivity
not to exceed \$300 +
renewal fee |
| (5) Reactivation (lapsed to active) | \$300.00 + renewal fee |
| (6) License verification to another state | \$ 15.00 |
| (7) Name change and new license | \$ 10.00 |
| (8) Duplicate license | \$ 10.00 |
| (9) Duplicate certificate | \$ 10.00 |
| (10) Returned check charge | \$ 20.00 |

(11) Temporary License Fee

\$ 10.00

Article 6
Code of Ethics.

94-10. Code of Ethics.

Principle 1: Occupational Therapy personnel shall demonstrate a concern for the well-being of the recipients of their services.

(a) Occupational Therapy personnel shall provide services in an equitable manner for all individuals.

(b) Occupational Therapy personnel shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially, or in any other manner. Occupational Therapy personnel shall avoid those relationships or activities that interfere with professional judgment and objectivity.

(c) Occupational Therapy personnel shall take all reasonable precautions to avoid harm to the recipient of services or to his or her property.

(d) Occupational Therapy personnel shall strive to ensure that fees are fair, reasonable, and commensurate with the service performed and are set with due regard for the service recipient's ability to pay.

Principle 2: Occupational Therapy personnel shall respect the rights of the recipients of their services.

(a) Occupational Therapy personnel shall collaborate with service recipients or their surrogate(s) in determining goals and priorities throughout the intervention process.

(b) Occupational Therapy personnel shall fully inform the service recipients of the nature, risks, and potential outcomes of any interventions.

(c) Occupational Therapy personnel shall obtain informed consent from subjects involved in research activities indicating they have been fully advised of the potential risks and outcomes.

(d) Occupational Therapy personnel shall respect the individual's right to refuse professional services or involvement in research or educational activities.

(e) Occupational Therapy personnel shall protect the confidential nature of information gained from educational, practice, research, and investigational activities.

Principle 3: Occupational Therapy personnel shall achieve and continually maintain high standards of competence.

(a) Occupational Therapy practitioners shall hold the appropriate national and state credentials for providing services.

(b) Occupational Therapy personnel shall use procedures that conform to the Standards of Practice of the American Occupational Therapy Association.

(c) Occupational Therapy personnel shall take responsibility for maintaining competence by participating in professional development and education activities.

(d) Occupational Therapy personnel shall perform their duties on the basis of accurate and current information.

(e) Occupational Therapy practitioners shall protect service recipients by ensuring that duties assumed by or assigned to other Occupational Therapy personnel are commensurate with their qualifications and experience.

(f) Occupational Therapy practitioners shall provide appropriate supervision to individuals for whom the practitioners have supervisory responsibility.

(g) Occupational Therapists shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

Principle 4: Occupational Therapy personnel shall comply with local, state, and federal laws guiding the profession of occupational therapy.

(a) Occupational Therapy personnel shall understand and abide by local, state, and federal laws.

(b) Occupational Therapy personnel shall inform employers, employees, and colleagues about those laws that apply to the profession of occupational therapy.

(c) Occupational Therapy practitioners shall require those they supervise in occupational therapy related activities to adhere to the code of ethics.

(d) Occupational Therapy personnel shall accurately record and report all information related to professional activities.

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Principle 5: Occupational Therapy personnel shall provide accurate information about occupational therapy services.

(a) Occupational Therapy personnel shall accurately represent their qualifications, education, experience, training, and competence.

(b) Occupational Therapy personnel shall disclose any affiliations that may pose a conflict of interest.

(c) Occupational Therapy personnel shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, or unfair statements or claims.

Principle 6: Occupational Therapy personnel shall treat colleagues and other professionals with fairness, discretion, and integrity.

(a) Occupational Therapy personnel shall safeguard confidential information about colleagues and staff members.

(b) Occupational Therapy personnel shall accurately represent the qualifications, views, contributions, and findings of their colleagues.

(c) Occupational Therapy personnel should report any breaches of the code of ethics to the Board of Occupational Therapy.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any political subdivision.

Document No. 2468

DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF PHARMACY
CHAPTER 99

Statutory Authority: 1976 Code Sections 40-43-60 and 40-1-70

Synopsis:

The Board of Pharmacy repealed Regulations 99-1 through 99-14 and 99-16 through 99-42. These regulations are covered in the new Pharmacy Practice Act enacted May 1998 and the Department of Labor, Licensing and Regulation Engine Act (Section 40-1-10, et seq. of the 1976 Code of Laws of South Carolina, as amended). Regulation 99-15 is amended to require pharmacists to post their annual renewal certificates in public view.

Instructions: Repeal Regulations 99-1 through 99-14 and 99-16 through 99-42. Regulation 99-15 is amended as it appears in the text below.

Text:

99-1 through 99-14. Repealed.

99-15. Display of Annual Renewal Certificate.

Any person who is a licensed pharmacist and who has charge of or is employed in a pharmacy or other permitted facility within this State shall display his annual renewal certificate in a conspicuous place in the primary pharmacy or other permitted facility of which he is in charge or in which he is employed, so that the annual renewal certificate is easily and readily observable by the public.

99-16 through 99-42. Repealed.

Fiscal Impact Statement: There will be no cost incurred by the State or any political subdivision.

Resubmitted February 4, 2000

Document No. 2377

DEPARTMENT OF LABOR, LICENSING AND REGULATION

South Carolina State Register Vol. 24, Issue 5
May 26, 2000

BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 101

Statutory Authority: 1976 Code Section 40-45-10, et seq.

Synopsis:

The Board of Physical Therapy Examiners is considering drafting regulations to supplement its recently enacted practice act. The proposed regulations include, but are not limited to, deleting repetitious language that is in statute, establishing fees, establishing guidelines for continuing education, and establishing requirements for licensure as a physical therapist and physical therapist assistant.

Instructions: Amend current regulations, by replacing them in their entirety with new text as it appears below.

Text:

Article 1
Definitions.

101-01. Definitions.

Definitions found in Section 40-45-20 apply to this chapter.

(1) "Continuing education" means an organized educational program designed to expand a licensee's knowledge base beyond the basic entry level educational requirements for physical therapists and physical therapist assistants. Course content must relate to patient care in physical therapy whether the subject is research, treatment, documentation, education, or management.

(2) "CEU" or "continuing education unit" means ten (10) contact hours of participation in an organized continuing experience.

(3) "Contact hour" means a minimum of fifty (50) minutes of instruction.

(4) "Academic semester credit hour" means fifteen (15) contact hours.

(5) "Academic quarter credit hour" means ten (10) contact hours.

Article 2
Officers of Board; Meetings.

101-02. Officers of Board.

At the first meeting of each calendar year, the Board shall elect from among its members a chairman, vice-chairman, and other officers as the Board determines necessary.

101-03. Meetings.

(1) The Board shall meet at least two (2) times a year and at other times upon the call of the chairman or a majority of the Board members.

(2) A majority of the members of the Board constitutes a quorum; however, if there is a vacancy on the Board, a majority of the members serving constitutes a quorum.

(3) Board members are required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the Board as provided in Section 1-3-240.

Article 3
Licensing Provisions.

101-04. General Licensing Provisions for Physical Therapists.

An applicant for initial licensure as a physical therapist must:

(1) be a graduate of a physical therapy educational program approved by the Board; or have earned a minimum of one hundred twenty (120) semester credit hours of college education from a program approved by the Board in the following areas:

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- (A) General Education. A minimum of forty two (42) semester credit hours is required in this area.
- (1) Humanities: a minimum of one (1) course in any of the following:
 - (a) Speech or Oral Communications; or
 - (b) Language other than native language; or
 - (c) Literature; or
 - (d) Art; or
 - (e) Music.
 - (2) Physical Sciences: two (2) semester courses in chemistry and two (2) semester courses in physics are required of the following:
 - (a) Chemistry, organic with laboratory;
 - (b) Chemistry, inorganic with laboratory;
 - (c) Physics with laboratory;
 - (d) Geology;
 - (e) Astronomy.
 - (3) Biological Sciences:
 - (a) Biology (one (1) semester course is required);
 - (b) Anatomy;
 - (c) Physiology;
 - (d) Zoology;
 - (e) Kinesiology;
 - (f) Neuroscience;
 - (g) Genetics.
 - (4) Social Sciences: a minimum of one (1) course in any of the following:
 - (a) History;
 - (b) Geography;
 - (c) Sociology;
 - (d) Government;
 - (e) Religion;
 - (f) Political Science.
 - (5) Behavioral Sciences: a minimum of one (1) course in any of the following:
 - (a) Psychology (one (1) semester course is required);
 - (b) Anthropology;
 - (c) Philosophy;
 - (d) Ethics.
 - (6) Mathematics: one (1) course minimum required in any of the following:
 - (a) Statistics;
 - (b) Algebra;
 - (c) Pre-Calculus;
 - (d) Calculus;
 - (e) Trigonometry;
 - (f) Geometry.
- (B) Professional Education. A minimum of sixty nine (69) semester credit hours is required in this area.
- (1) Basic Health Sciences: one (1) course required in each of the following:
 - (a) Human Anatomy (specific to physical therapy);
 - (b) Human Physiology (specific to physical therapy);
 - (c) Neurological Sciences;
 - (d) Kinesiology/Functional Anatomy;
 - (e) Abnormal or Developmental Psychology;
 - (f) Pathology.
 - (2) Clinical Sciences:
 - (a) Clinical medicine pertinent to physical therapy, including but not limited to, the following:
 - (1) Neurology;
 - (2) Orthopedics;

- (3) Pediatrics;
- (4) Geriatrics.
- (b) Physical Therapy course work to include, but not limited to, the following:
 - (1) Integumentary Assessment and Treatment;
 - (2) Musculoskeletal Assessment and Treatment;
 - (3) Neuromuscular Assessment and Treatment;
 - (4) Cardiopulmonary Assessment and Treatment; and
- (2) submit an application on a form approved by the Board, along with the required fee; and
- (3) pass an examination approved by the Board; and
- (4) submit proof of not less than one thousand (1000) clinical practice hours under the on-site supervision of a licensed physical therapist on a form approved by the Board if the applicant is not a graduate of an approved school.

101-05. General Licensing Provisions for Physical Therapist Assistants.

An applicant for initial licensure as a physical therapist assistant must:

- (1) be a graduate of a physical therapist assistant program approved by the Board; and
- (2) submit an application on a form approved by the Board, along with the required fee; and
- (3) pass an examination approved by the Board.

101-06 Licensure by Endorsement.

An applicant for licensure as a physical therapist or physical therapist assistant by endorsement must:

- (1) hold a current, active, and unrestricted license under the laws of another state or territory that had requirements that were, at the date of licensure, equivalent to the requirements in effect at the time of application in South Carolina; and
- (2) submit an application on a form approved by the Board, along with the required fee; and
- (3) submit evidence on a form approved by the Board of one thousand (1000) clinical practice hours under the on-site supervision of a licensed physical therapist if the applicant is a graduate of a non-approved school of physical therapy.

101-07. Reactivation of Inactive or Lapsed Licenses.

(1) A physical therapist or physical therapist assistant whose license has been inactive or lapsed for at least three (3) years but less than five (5) years may reactivate the license by applying to the Board, demonstrating evidence satisfactory to the Board on a form approved by the Board of no less than one thousand (1000) clinical practice hours under the on-site supervision of a physical therapist licensed in this State, and paying the reactivation fee.

(2) A physical therapist or physical therapist assistant whose license has been inactive or lapsed for at least five (5) years but less than ten (10) years may reactivate the license by applying to the Board, demonstrating evidence satisfactory to the Board on a form approved by the Board of no less than one thousand (1000) clinical practice hours under the on-site supervision of a physical therapist licensed in this State, successful completion of a course(s) approved by the Board, and paying the reactivation fee.

(3) A physical therapist or physical therapist assistant whose license has been inactive or lapsed for at least ten (10) years or more may reactivate by applying to the Board, demonstrating evidence satisfactory to the Board on a form approved by the Board of no less than one thousand (1000) clinical practice hours under the on-site supervision of a physical therapist licensed in this State, successfully passing an examination administered and approved by the Board, and paying the reactivation fee.

Article 4
Continuing Education.

101-08. Continuing Education.

Continuing education requirements become effective upon approval by the Governor and must first be reported beginning in 2002 and thereafter.

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(1) Every licensed physical therapist and physical therapist assistant shall earn 3.0 CEUs or thirty (30) hours of acceptable continuing education credit per biennium year.

(2) Physical therapists and physical therapist assistants licensed in South Carolina on or after May 1 of the first year of the biennium are required to present evidence of 1.5 CEUs or fifteen (15) hours of acceptable continuing education credit to renew the license. Physical therapists and physical therapist assistants licensed in South Carolina on or after May 1 of the second year of the biennium are said to have satisfied continuing education requirements for the remainder of the biennium.

(3) Standards for approval of continuing education. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:

(a) it constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

(b) it pertains to common subjects or other subject matters which integrally relate to the practice of physical therapy; and

(c) it is conducted by individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program and is accompanied by a paper, manual, or outline which substantively pertains to the subject matter of the program and reflects program schedule, including:

(1) fulfilling stated program goals or objectives, or both;

(2) providing proof of attendance to include original certificate with participant's name, date, place, course title, presenter(s), and number of program contact hours; and

(d) the Board will not grant prior approval but each licensee will be responsible for ensuring that each course submitted for continuing education credit meets these standards.

(4) The following courses are automatically approved for required contact hours:

(a) APTA (American Physical Therapy Association) and SCAPTA (South Carolina American Physical Therapy Association) sponsored courses, APTA home study courses, and courses sponsored by other state professional physical therapy associations; and

(b) college course work which is judged germane to the practice of physical therapy and is conducted or sponsored by accredited institutions of higher education; and

(c) AMA (American Medical Association) continuing education courses that involve physical therapy; and

(d) AHEC (Area Health Education Consortium) courses that pertain to physical therapy; and

(e) in-service hours totaling 0.4 CEUs maximum per biennium; and

(f) CPR of 0.4 CEUs per biennium; and

(g) such other providers as approved by the Board.

(5) Unacceptable activities for continuing education include, but are not limited to:

(a) presenting at professional meetings, conferences, or conventions; and

(b) teaching or supervision; and

(c) participation in or attending case conferences, grand rounds, informal presentations, etc.; and

(d) non-educational, entertainment, or recreational meetings or activities; and

(e) committee meetings, holding of office, serving as an organizational delegate, or fulfilling editorial responsibilities (publications); and

(f) meetings for purposes of policy-making; and

(g) visiting exhibits or poster presentations; and

(h) informal self study, e.g. self selected reading, participation in a journal club, listening to audio tapes; and

(i) published research.

(6) Report Requirements:

(a) reports shall be submitted on forms available from the Board. The Board shall routinely distribute its continuing education report forms with the biennial renewal notice. By signing the biennial report of continuing education, the licensee signifies that the report is true and accurate; and

(b) licensees shall retain original corroborating documentation of their continuing education courses and official transcripts of college course work with passing grade of C or better from the beginning date of the licensure period.

(7) Audit of continuing competency:

- (a) each licensee shall be responsible for maintaining sufficient records in a format determined by the Board; and
 - (b) these records shall be subject to a random audit by the Board to assure compliance with this section; and
 - (c) the Board may audit a percentage of the continuing education reports.
- (8) In the event of denial, in whole or part, of credit for continuing education activity, the licensee shall have the right to request a hearing in accordance with the Administrative Procedures Act.

Article 5
Fees.

101-09. Fees.

(A) Fees are as follows:

(1) Application fee	\$ 120.00
(2) Biennial license renewal	
(a) physical therapist	\$ 100.00
(b) physical therapist assistant	\$ 90.00
(3) Late Renewal Penalty (per day-not to exceed thirty (30) days)	\$ 10.00
(4) Reactivation (Inactive to Active)	
(a) physical therapist	\$ 25.00 per year of inactivity not to exceed \$300 + renewal fee
(b) physical therapist assistant	\$ 22.50 per year of inactivity not to exceed \$300 + renewal fee
(5) Reactivation (lapsed to active)	\$ 300.00 + renewal fee
(6) License verification to another state	\$ 20.00
(7) Name change and new license	\$ 10.00
(8) Duplicate license	\$ 10.00
(9) Duplicate certificate	\$ 10.00
(10) Returned check charge	\$ 20.00

(B) The Board may direct applicants to pay an examination fee directly to a third party who has contracted to administer the examination.

(C) Fees are nonrefundable and may be prorated in order to comply with a biennial schedule.

Article 6
Standards of Practice.

101-10. Supervision Guidelines.

It is recommended that a physical therapist should not concurrently supervise more than three (3) full-time equivalent physical therapist assistant positions. The Board, in its discretion, may permit supervision of more than three (3) full-time equivalent physical therapist assistant positions, for a short, defined period of time, if a situation arises in a physical therapy treatment setting that makes compliance impossible. Relief from this supervision ratio is allowable if there is no immediate risk to public health or safety as determined by the Board.

101-11. Use of Aides in the Practice of Physical Therapy.

Aides are non-licensed personnel who assist the physical therapist or physical therapist assistant but whose duties do not require an understanding of physical therapy or formal training in anatomical, biological, or physical sciences. Education or training of the physical therapy aide shall not exceed the scope of activities described in Section 40-45-290. Aides are not to be assigned duties that may be performed only by a licensed physical therapist or licensed physical therapist assistant. When aides are utilized in the treatment of patients, the following guidelines shall apply:

- (1) when applying hydrotherapy, heat or cold treatments, a physical therapist or physical therapist assistant may allow an aide to assist patients in dressing and undressing, drape and position the patient in preparation for treatment, clean and fill the whirlpool, attend the patient during treatment, wrap the patient's extremities after a paraffin bath, and place the hot packs on the patient; and

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(2) when applying electrotherapy, a physical therapist or physical therapist assistant may allow an aide to prepare the area to be treated and to prepare equipment and apply electrodes as specified by the physical therapist and physical therapist assistant; and

(3) when applying traction, a physical therapist or physical therapist assistant may allow an aide to prepare the patient for treatment, position the patient, and apply the cervical or pelvic harness; and

(4) when applying therapeutic exercise, a physical therapist or physical therapist assistant may allow an aide to set up the patient's exercise equipment, prepare the equipment, and give the patient established amount of weights for resistive exercise; and

(5) when applying gait training, a physical therapist or physical therapist assistant may allow an aide to prepare equipment such as crutches, walkers, parallel bars, and braces and to assist the physical therapist or physical therapist assistant in gait training of the patient.

101-12. Referral.

A physical therapist may not continue treatment after the initial thirty (30) days has expired unless the physical therapist receives a referral orally or in writing by a licensed medical doctor or dentist.

Article 7 Code of Ethics.

101-13. Code of Ethics for Physical Therapists.

Principle 1: Physical Therapists respect the rights and dignity of all individuals.

Principle 2: Physical Therapists comply with the laws and regulations governing the practice of physical therapy.

Principle 3: Physical Therapists accept responsibility for the exercise of sound judgment.

Principle 4: Physical Therapists maintain and promote high standards for physical therapy practice, education, and research.

Principle 5: Physical Therapists seek remuneration for their services that is deserved and responsible.

Principle 6: Physical Therapists provide accurate information to the consumer about the profession and about those services they provide.

Principle 7: Physical Therapists accept the responsibility to protect the public and the profession from unethical, incompetent, or illegal acts.

Principle 8: Physical Therapists participate in efforts to address the health needs of the public.

101-14. Code of Ethics for Physical Therapist Assistants.

Standard 1: Physical Therapist Assistants provide services under the supervision of a physical therapist.

Standard 2: Physical Therapist Assistants respect the rights and dignity of all individuals.

Standard 3: Physical Therapist Assistants maintain and promote high standards in the provision of services, giving the welfare of patients their highest regard.

Standard 4: Physical Therapist Assistants provide services within the limits of the law.

Standard 5: Physical Therapist Assistants make those judgments that are commensurate with their qualifications as physical therapist assistants.

Standard 6: Physical Therapist Assistants accept the responsibility to protect the public and the profession from unethical, incompetent, or illegal acts.

101-14. Sexual Misconduct.

Engaging in sexual misconduct constitutes grounds for disciplinary action. Sexual misconduct for the purposes of this section includes the following:

(1) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists.

(2) Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.

(3) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient evaluation or treatment under current practice standards.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any of its political subdivisions.

Document No. 2432

PUBLIC SERVICE COMMISSION

CHAPTER 103

Statutory Authority: 1976 Code Sections 58-3-140, as amended, and 58-5-210

103-504 Territory and Certificates
103-704 Territory and Certificates

Synopsis:

The Public Service Commission is proposing that the transfer of a utility providing water to the public or a utility providing sewerage disposal obtain commission approval when such transfer of the utility occurs by the sale of stock or otherwise.

Instructions: Regulations 103-504 and 103-704 are being amended and will read as follows:

Text:

103-504 Territory and Certificates.

No existing public utility supplying sewerage disposal to the public, or any individual, corporation, partnership, association, establishment, or firm undertaking the construction or acquisition of a utility, shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or of any extension thereof, by the sale of stock or otherwise, without first obtaining from the commission a certificate that the sale, transfer, or acquisition is in the public interest, or that public convenience and necessity require or will require construction or operation of any utility system, or extension. Such certificate shall be granted only after the applicable information set forth in Subarticle 2, 103-510 et seq., has been filed, and after notice has been given to the Department of Health and Environmental Control and to other interested sewerage utilities, and to the public, and after due hearing. Provided, however, that this regulation shall not be construed to require any existing utility to secure a certificate for an extension within or to territory already served by it, necessary in the ordinary course of its business. But, if any utility in constructing or extending its lines, plant or system unreasonably interferes, or is about to unreasonably interfere, with the service or system of any other utility, the commission may make such order, and prescribe such terms and conditions, in harmony with this regulation, as are just and reasonable.

103-704 Territory and Certificates

No existing public utility supplying water to the public, or any individual, corporation, partnership, association, establishment or firm undertaking the construction or acquisition of a utility, shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or of any extension thereof, by the sale of stock or otherwise, without first obtaining from the commission a certificate that the sale, transfer or acquisition is in the public interest, or that public convenience and necessity require or will require construction or operation of any utility system, or extension. Such certificate shall be granted only after the applicable information set forth in Subarticle 2, 103-710 et seq., has been filed, and after notice has been given to the Department of Health and Environmental Control and other interested water utilities, and to the public, and after due hearing; provided, however, that this regulation shall not be construed to require any existing water utility to secure a certificate for an extension within or to territory already served by it, necessary in the ordinary course of its business. But, if any water utility in constructing or extending its lines, plant or system unreasonably interferes, or is about to unreasonably interfere, with the service or system of any other utility, the commission may make such order, and prescribe such terms and conditions, in harmony with this regulation, as are just and reasonable.

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Fiscal Impact Statement:

There will be no increased cost incurred by the State or any political subdivision.

Document No. 2475
SOUTH CAROLINA STATE LIBRARY
CHAPTER 75
Statutory Authority: 1976 Code Section 60-1-80(b)

75-1. Use of State Aid Funds

Synopsis:

The regulations update State Aid regulations to accommodate advancements in library and information technology and provide increased flexibility and local discretion in the expenditure of funds. They address such issues as hiring of staff, automation and networking, staff training and long range planning.

The regulations:

allow State Aid to be used for 100% of salaries of appropriate local staff, including part time staff;
remove the cap of state funding as a percentage of total public library funding;
allow state funding to be used for staff development/training and consultant services;
require public libraries to provide remote access to statewide databases administered by the State Library;
require public libraries to develop long range plans;
expand the definition of library materials to include those in all formats; and
authorize the State Library to waive regulations upon petition by a library system for a period not to exceed one year.

Instructions:

Replace existing Chapter 75 with below text.

Text:

75-1. Use of State Aid Funds

A. State Aid Funds may be used:

(1) To employ professional and preprofessional librarians who meet the certification requirements and hold the appropriate certificate currently effective, from the State Library and other staff consistent with South Carolina Public Library Standards published by the South Carolina State Library.

(a) "Professional" means a graduate of master's degree program of library and information studies accredited by the American Library Association.

(b) "Preprofessional" means a graduate of an accredited four-year college having eighteen semester hours of library science or other appropriate course work as determined by the South Carolina State Library.

(c) "Other Staff" means an individual with appropriate training in areas such as automation/technology, human resources, public relations/marketing, and finance.

(2) To provide on-going training and continuing educational opportunities for all employees and trustees of the library consistent with South Carolina Public Library Standards published by the South Carolina State Library.

- (3) To secure services of outside expertise in areas of library operations and services.
- (4) To purchase or lease library materials and resources in all formats for service to the public.
- (5) To purchase or lease library and office equipment and services-

(6) To purchase a new bookmobile and other vehicles for public service use and pay for their operations. Vehicles are not to be assigned to individuals for personal use.

(7) To provide an annual audit of the financial records of the library prepared by a certified public accountant provided such audit is not part of the general county audit paid for by the county.

B. State Aid funds may not be used for rent for library buildings, purchase of land, construction or repairs to buildings, operating expenses such as utilities, or janitor supplies.

C. Local library support shall be not less than the amount actually expended for library operations from local sources in the second preceding year.

D. Any library receiving State Aid shall be legally established and administered by a legally appointed Board and shall:

- (1) Provide free basic public library service to all residents in the library's legal service area (LSA) consistent with South Carolina Public Library Standards published by the South Carolina State Library.
- (2) Provide remote access to statewide data bases coordinated by the South Carolina State Library.
- (3) Provide an adequate level of service, either through county library systems or through regional library systems.
- (4) Adopt an annual budget with balanced proportions among personnel (65% - 70%), information resources (15% - 20%) and maintenance (10% - 20%).
- (5) Employ in professional and preprofessional positions librarians meeting the certification requirements of the South Carolina State Library and meeting the staffing standards consistent with the South Carolina Public Library Standards published by the South Carolina State Library.
- (6) Systematically acquire library materials consistent with a collection development policy approved by the local board.
- (7) Adopt a long-range plan that provides reasonable access to all library services to all residents in the library's service area consistent with South Carolina Public Library Standards published by the South Carolina State Library.
- (8) Provide at least one library in the system that is open and provides on site access consistent with South Carolina Public Library Standards published by the South Carolina State Library.
- (9) Supply the South Carolina State Library with such statistics and information as it may from time to time request.
- (10) Have the financial records of the library audited annually by a certified public accountant and furnish the South Carolina State Library with a copy of the audit report.
- (11) Notify the South Carolina State Library of official public library board appointments within 30 days of appointment.

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(12) Invite the South Carolina State Library Director or designee to one board meeting annually.

E. The South Carolina State Library is authorized to waive regulations upon petition by a library system for a period not to exceed one year.

Fiscal Impact Statement:

There are no increased costs to the State or its political subdivisions.

Document No. 2473

DEPARTMENT OF TRANSPORTATION

Chapter 63

Statutory Authority: 1976 Code Section 28-11-50

63-300 – 309 Contractor Prequalification, Disqualification and Suspension

Synopsis:

The South Carolina Department of Transportation proposes to amend its regulations concerning Contractor Prequalification, Disqualification and Suspension to eliminate the procedure for classification and rating of contractors based on net liquid assets. In the future, financial responsibility of contractors will be assured through the bonding process. The new regulations will also amend the procedure for review and appeal of a disqualification or suspension of a contractor. Under the amended regulations, the SCDOT Executive Director will conduct an initial review and issue a decision. An appeal from that decision may be taken to the Administrative Law Judge Division.

SECTION-BY-SECTION DISCUSSION:

Section: EXPLANATION OF CHANGE:

63-300 All references to classifications and ratings are deleted.

63-301 References to classifications, ratings, and furnishing financial records are deleted.

63-302 Provides for a certificate to be furnished to prequalified contractors.

63-303 The requirement that the sworn statement of the contractor include a statement of assets is deleted and the requirement for a description of the contractor's equipment is amended to include leased equipment.

63-304-
63-309 References to ratings and classifications have been deleted. Previous Sections 63-305 and 63-306 are deleted entirely and subsequent sections renumbered.

63-306(E) The procedure for disqualification and suspension has been amended to include civil sanctions and to provide for an appeal of an agency decision to the Administrative Law Judge Division.

Instructions: Replace existing S. C. Code Sections 63-300 through 63-309 with the following sections and text.

Text:

63-300. Prequalification of eligible contractors.

Persons, firms or corporations eligible to bid as a prime contractor on construction work for the Department of Transportation shall have prequalified as herein required. No bids for such work will be considered by the Department of Transportation except from persons, firms or corporations that have so prequalified.

63-301. Basis for prequalification.

Prequalification will be based on a verified showing of experience, responsibility record, and available equipment. A prerequisite to prequalification will be a sworn statement furnished to the Department by the applicant. The statement must be made on a form provided by the Department of Transportation and must include all information required by the Department.

Contractors making application for prequalification for the first time must file their statements with the Department at least seven (7) days prior to the date on which they desire to become qualified for bidding.

63.302. Certificate.

Each contractor qualifying under these rules and regulations will be furnished a Prime Contractor's Prequalification Certificate showing the contractor is prequalified and the expiration date of the certificate.

63-303. Contents of sworn statement.

The sworn statement called for in 63-301 shall be made by filling in the Department's standard questionnaire form and shall show:

- (a) The experience of the applicant in handling the character of work for which it desires to become an eligible contractor.
- (b) A description of the equipment owned or leased by the applicant.
- (c) list of references, giving names of responsible persons having knowledge of the applicant's character, experience and capabilities.
- (d) Such other information as may be called for in the Department's form.

63-304. Failure to carry out contract as disqualification.

No applicant who has failed to carry out any contract awarded by the South Carolina Department of Transportation will be qualified as eligible. This requirement, however, shall not serve to bar persons having so failed from serving as employees of otherwise eligible contractors.

63-305. Disqualification of unsatisfactory contractors.

A contractor whose progress on work underway is not satisfactory to the Department will not be awarded additional work. Contractors whose conduct of their work shows incompetency or irresponsibility may be disqualified without notice.

63-306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

(1) The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.

(2) The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right.

(3) In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.

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(4) Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

B. Definitions.

(1) **Affiliate:** Any business entity having direct or indirect control over, or which is controlled directly or indirectly, by any person who has been disqualified or suspended. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.

(2) **Business Entity:** A corporation, partnership, limited partnership, association or sole proprietorship.

(3) **Civil Judgment:** The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating civil liability for the wrongful acts complained of.

(4) **Commission:** The Commission of the South Carolina Department of Transportation.

(5) **Contractor's Certificate.** A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.

(6) **Conviction:** A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *non contendere*.

(7) **Department:** South Carolina Department of Transportation.

(8) **Disqualification:** An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Department during the period of disqualification.

(9) **Director:** The Executive Director of South Carolina Department of Transportation.

(10) **Person:** Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.

(11) **Principal:** Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

(12) **Suspension:** An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

(13) **Unlawful payment or gratuity:** Transfer of anything of value to a Department employee in violation of state statute or regulatory law or Departmental policy.

C. **Disqualification:** Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

(1) Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti-trust violations, making false claims,

making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(2) Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(3) Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

(4) Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

(5) Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

(6) Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

(7) Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Director.

(8) Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

(D) Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

(1) Notice of disqualification, suspension, or sanctions may be issued by the Director and shall include:

- (a) A reference to the particular sections of the statutes, regulations, and rules involved;
- (b) A short and plain statement of the matters asserted.

(2) The SCDOT shall have broad equitable powers in the impositions of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

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- (a) disqualification for a specific period of time;
- (b) monetary penalty;
- (c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions, and

(d) conditions which must be met prior to restoration of a Contractor's Certificate.

(3) A person may seek relief from the disqualification or suspension by requesting a contested case hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

F. Scope of Disqualification.

(1) In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension/disqualification. A violation of the terms of any suspension/disqualification may be the basis of further sanction.

(2) In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

(3) In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.

FISCAL IMPACT STATEMENT

The South Carolina department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed amendments.

Document No. 2472

DEPARTMENT OF TRANSPORTATION

Chapter 63

Statutory Authority: 1976 Code Section 28-11-50

63-321 – 322 Relocation of Displaced Persons

Synopsis:

The South Carolina Department of Transportation proposes to amend its regulations concerning relocation of displaced persons, 63-321 and 63-322, to conform with current Federal regulations and set forth a new procedure for review and appeal of relocation assistance eligibility decisions. Under the new procedures, an initial review would be conducted by the SCDOT Executive Director and an appeal to the Administrative Law Judge Division could be taken from the Executive Director’s decision.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
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63-321	This section would be repealed in its entirety. It is outdated and unnecessary since the relocation benefit amounts are determined by Federal regulation.
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63-322 A	The words “Review and” were added in two places in the last sentence.
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63-322 B	The requirement that a request for review be submitted on an SCDOT form is replaced by a statement that a form may be requested from the Department for use in filing a request for review. The time limit for filing a request for review is described more precisely.
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63-322 C-D	The former procedure for a hearing by a panel of SCDOT officials is replaced. Under the new procedures, an initial review would be conducted by the SCDOT Executive Director and an appeal to the Administrative Law Judge Division could be taken from the Executive Director’s decision.
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63-322 E	A new section is added allowing a person appealing from a relocation assistance decision to be represented by legal counsel at their own expense. This section mirrors the Federal regulations
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Instructions: Delete South Carolina Code Section 63-321 entirely and replace Section 63-322 with the text shown below.

Text:

63-321. Moving Expenses of Persons Displaced by Highway Construction

(Regulation to be repealed in its entirety)

63-322. Review of Applications for Relocation Assistance Payments Under Chapter 11 of Title 28 of the 1976 Code.

A. An applicant for a relocation assistance payment under Chapter 11 of Title 28 of the 1976 Code shall be notified promptly, in writing, of (1) his eligibility for payment claimed, (2) the amount, if any, to which he may be entitled, and (3) the time and manner in which such payment, if any, will be made. Such notification shall also advise the applicant of his right to review and appeal and the procedures for review and appeal if he is dissatisfied with the Department’s decision with respect to his application for a relocation assistance payment.

B. All petitions or requests for review of a decision by the Department’s Right-of-Way Office with respect to an applicant’s eligibility, or the amount of a payment, if any, shall be submitted, in writing and must be filed within sixty (60) days of the Department’s determination of the displaced person’s claim. A form for use in filing requests for review may be requested from the Department’s Right-of-Way Office.

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C. If a timely request for review is filed, the SCDOT Executive Director or her designee will review the application and all pertinent justification and other material submitted by the applicant as well as other available information. The Executive Director will furnish the applicant with a written decision following the review.

D. An applicant may seek relief from the decision of the Executive Director by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of the Executive Director's decision.

E. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

Fiscal Impact Statement:

The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed amendments.

Document No. 2459

DEPARTMENT OF TRANSPORTATION

CHAPTER 63

Statutory Authority: 1976 Code Section 57-25-170

63-338. Specific Information Service Signing

Synopsis:

The Department proposes to amend 63-338 to allow trailblazer signs for businesses participating in the Logo programs which are not easily accessed from the main traveled way; to modify the criteria for food businesses to participate in the Logo Program; to allow six businesses to be displayed on a service panel for one direction of a double interchange sign if less than three businesses are present to participate from the other direction; and to provide for Attraction Signing.

Section-by-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-338 C(5)	Definition of Trailblazer Panel added. These panels will be used to direct motorists to a particular service which is not located on the main route or which is not easily accessed.
63-338C(6)	Definition of Business amended to include reference to attractions.
63-338 D(4)	Provides for combination panels that display up to three specific services
63-338 D(5)	Provides for an increase of up to nine business signs on a specific service panel upon approval by the Federal Highway Administration.
63-338 D(3)(11)(12)	Amended to provide for attraction panels
63-338 E(3)	Amended to allow participation by food businesses open at least six days per week and twelve hours per day and to provide that panel must include legend showing any day the business is closed.

- 63-338 (G) New section added to provide for trailblazer panels to direct motorists to businesses where additional guidance is needed.
- 63-338 (I)(1)(e) New section added to provide for attraction panels

63-338. Throughout the proposed regulation numerous changes are proposed for clarity. Also this section has been amended throughout to include references to trailblazer panels and attractions panels. The standards for a double interchange have been amended and all reference affected by that change have been amended.

Instructions: Replace the existing Code of Laws Section 63-338 with the following text:

Text:

63-338. Specific Information Service Signing.

A. Introduction. The South Carolina Department of Transportation has developed this program for the installation of specific service panels and business signs on fully controlled access highways.

B. Purpose. The purpose of this program is:

- (1) To provide motorists with business identification and directional information for essential motorist services and for eligible attractions;
- (2) To eliminate illegal outdoor advertising signs as required by the South Carolina Highway Advertising Control Act. 57-25-110, et seq.

C. Definitions

- (1) Department is the South Carolina Department of Transportation or its authorized agents.
- (2) A Specific Service Panel is an official sign, rectangular in shape, located within the highway right-of-way and carrying legend for one (1) (or a combination of up to three (3)) of the following services: gas, food, lodging, camping, or attraction along with directional information and space for one (1) to six (6) individual business signs.
- (3) A Business Sign is a separately attached sign, rectangular in shape, mounted on the specific service panel to show the brand or trademark and name, or both, of a qualified motorist service available at or near the next interchange.
- (4) A Ramp Panel is an official sign, rectangular in shape, located along an exit ramp and carrying legend for one (1) (or a combination of up to three (3)) of the following services: gas, food, lodging, camping or attraction together with directional information and space for one (1) to six (6) individual business signs of the same design as business signs, but smaller.
- (5) A Trailblazer Panel is an official sign, rectangular in shape, located on the right of way of a highway with directional arrows and space for one (1) to four (4) individual signs of the same design as business signs, but smaller.
- (6) A Business is an individual business that provides gas, food, lodging, camping or attraction services to motorists.
- (7) Continuous Operation is the unremitting availability of motorist services within a prescribed number of hours.
- (8) Drinking Water is a water fountain and/or cups of water provide to all motorists at no charge.
- (9) Public Telephone is a coin operated telephone available to all motorists. Private or business phones may be allowed if the business is unable to obtain a coin operated telephone so long as its use is provided to motorists.
- (10) Rest Room Facilities are separate facilities for men and women, to include sink and toilet, and available to all motorists at no charge.

D. Specific Service Panels

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(1) A specific service panel bearing one (1) to six (6) separately attached business signs may be erected on fully controlled access highways between the previous interchange and the exit direction sign where space permits.

(2) The specific service panel nearest to the interchange should be erected no closer than 1600 feet to the beginning of exit ramp taper of the approaching interchange with at least 800 foot spacing between the information panels. The specific service panel should be located longitudinally so as to take advantage of natural terrain and have the least impact on the scenic environment.

(3) The number of business signs that may be displayed on specific service panels shall be limited to six (6) each for Gas, Food, Lodging, Camping, and Attractions at any interchange.

(4) A combination panel is a specific service panel that may display a maximum of three (3) specific services. The total number of business signs on a combination panel shall be limited to six (6).

(5) Upon approval of the Federal Highway Administration, the number of business signs displayed on a specific service panel may be increased to nine (9). Expansion of logo panels will be at the Department's discretion and will be available to all service categories and panel types.

(6) The size of specific service panels should be adequate to accommodate the number of business signs to be erected, using the required legend height and spacing in accordance with the latest Department specifications.

(7) For double exit interchanges the specific service panel shall consist of two sections, one for each exit. The top or left section shall display the business signs for the first exit and the lower or right section shall display the business signs for the second exit. Where participation for one exit is less than three (3) businesses for a service, the specific service panel may be arranged to allow for four (4) to six (6) business signs to be displayed for the other exit. No more than six (6) business signs shall be displayed for any service at an interchange.

(8) The background color of a specific service panel shall be blue with white reflectorized border. The words gas, food, lodging, camping or attraction and directional information shall be white reflectorized legend mounted on the blue panel.

(9) Specific service panels shall not be erected at any interchange with another controlled access facility; nor shall they be erected at any interchange where there is no entrance ramp at the interchange or at another reasonably convenient interchange by which the motorist may proceed in the desired direction of travel without undue indirection or use of poor connecting roads.

(10) No more than one specific service panel for gas, food, lodging, camping or attraction shall be erected in each direction approaching an interchange.

(11) A maximum of four (4) specific service panels may be erected in each direction approaching an interchange.

(12) Attraction signing shall not be used for facilities that have the primary purpose of retail sales.

E. Business Signs - Main Roadway

(1) Business signs separately attached on a specific service panel shall show the brand or trademark and name, or both, of the gas, food, lodging, camping or attraction facility located at or conveniently accessible from an interchange. Nationally, regionally or locally known commercial symbols or trademarks shall be used when applicable. The brand or trademark identification symbol used shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks or brand symbols which interfere with, imitate or resemble an official traffic control device will not be permitted.

(2) Each business sign on a specific service panel shall be contained in a rectangular background area. Any business sign that does not display a nationally, regionally or locally known symbol or trademark shall display the business name in legend that contrasts effectively with the background.

(3) If a food business is only open six (6) days a week, it will be required to incorporate into the design of its business signs a message indicating what day the business is closed. This message shall be legend that says "CLOSED" followed by the day of week the business is closed. The color of the legend shall contrast effectively with the background of the business sign.

(4) Only one business sign may be shown in each direction of travel for each service provided by a business, even though the business may be accessible from more than one interchange. Signing will be provided at the interchange closest to the business, as determined by the Department.

(5) Where the number of fully qualifying gas, food, lodging or camping businesses exceeds the available spaces on the specific service panel, businesses will be given preference in order of measured distance from the

interchange as described in Section I(5). The business farthest from the interchange will be deleted from the program by the Department, but only after its business signs have been displayed for not less than one year from the date of the original agreement with the Department.

(6) Where the number of fully qualifying Attraction businesses exceeds the available spaces on the specific service panel, businesses will be given preference in order of regional significance as determined by the Department.

(7) When a business qualifies for business sign placement on more than one type of specific service panel and the maximum number of allowable participating businesses is exceeded, placement will be made only on that type panel which, as determined by the Department, best describes the main product or service. In circumstances of dual ownership (i.e., a motel and restaurant separately owned and operated on the same premises), the Department's decision of main service will still apply.

F. Ramp Panels

(1) When the Department determines that any participating business is not visible from the terminal or decision point of a ramp which permits traffic to proceed in more than one direction on the crossroad, a ramp panel shall be placed on the exit ramp or at its terminus.

(2) Ramp signs shall not be erected for businesses not displaying business signs on a specific service panel.

(3) A ramp combination panel is a ramp panel that may display a maximum of three (3) specific services. The total number of ramp business signs on a ramp combination panel shall be limited to six (6).

(4) Ramp panels will be of an appropriate size to display the required number of ramp business signs.

(5) The background color of a ramp panel shall be blue with white reflectorized border. The words gas, food, lodging, camping or attraction and directional information shall be in white reflectorized legend mounted on the blue panel.

G. Trailblazer Panels

(1) When the Department determines that the route to a business requires a direction change, it is questionable as to which roadway to follow, or when additional guidance is needed, a trailblazer panel may be placed along a crossroad up to 500 feet prior to any required turn.

(2) Trailblazer panels will be of an appropriate size to display the required number of trailblazer business signs.

(3) The background color of a trailblazer panel shall be blue with white reflectorized border. White reflectorized directional arrows shall be mounted on the blue panel as needed for proper guidance.

(4) Trailblazer panels shall not be erected for businesses not displaying business signs on a specific service panel and a ramp panel.

(5) A trailblazer panel may contain various types of services on a single panel.

(6) When space along the right-of-way limits the number of signs or panels that can be erected, all other Department signing shall take priority over trailblazer panels.

H. Business Signs – Ramp and Trailblazer

(1) Ramp and trailblazer business signs shall be of the same design as business signs, but smaller.

(2) Each business sign mounted on a ramp panel and trailblazer panel shall be contained in a rectangular background area. Any business sign which does not display a nationally, regionally or locally known symbol or trademark shall display the business name legend which contrasts effectively with the background.

(3) If a food business is only open six (6) days a week, it will be required to incorporate into the design of its business signs a message indicating what day the business is closed. This message shall say "CLOSED" followed by the day of week the business is closed. The color of the legend shall contrast effectively with the background of the business sign.

I. Criteria

(1) A business located at or conveniently accessible from an interchange on a fully controlled access highway shall be eligible to have its business sign placed on a specific service panel, a ramp panel, and on a trailblazer panel (but in accordance with Section F(1) and G(1)) if it meets the following conditions:

(a) Gas:

1. Located within three (3) miles of the interchange;

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2. Vehicle services shall include fuel, oil and water;
 3. Continuous operation at least sixteen (16) hours per day, seven (7) days a week;
 4. Rest room facilities;
 5. Drinking water;
 6. Public telephone;
- (b) Food:
1. Located within three (3) miles of the interchange;
 2. Maintain a "Grade A" rating as defined by the South Carolina Department of Health and Environmental Control;
 3. Continuous operation at least twelve (12) hours a day, six (6) days a week;
 4. Rest room facilities;
 5. Public telephone;
 6. Indoor seating capacity for at least twenty (20) persons and/or drive-thru service;
- (c) Lodging:
1. Located within three (3) miles of the interchange;
 2. Permit to operate by the South Carolina Department of Health and Environmental Control;
 3. Continuous operation, twelve (12) months per year;
 4. At least ten (10) lodging rooms;
 5. Public telephone;
- (d) Camping:
1. Located within six (6) miles of the interchange;
 2. Permit to operate by the South Carolina Department of Health and Environmental Control;
 3. Modern sanitary facilities including restrooms and showers;
 4. Drinking water;
 5. Overnight accommodations for all types of travel trailers, tents and camping vehicles;
 6. Adequate parking accommodations for at least ten (10) camping vehicles;
 7. Continuous operation, seven (7) days a week;
 8. If operated on a seasonal basis, signs will be removed;
 9. Public telephone.
- (e) Attraction:
1. Located within fifteen (15) miles of the interchange;
 2. Be an activity or location that is one of the following:
 - (i) Amusement Park: a permanent area, open to the general public, whose principle activities include boating, entertainment rides, hiking, picnicking, swimming, etc.;
 - (ii) Arena: an auditorium, civic or convention center, racetrack, sports complex, or stadium having a minimum seating capacity of 5,000;
 - (iii) College or University Facilities: an institution which is approved by a nationally recognized accreditation agency, has an enrollment of at least 500 fulltime students and which grants degrees;
 - (iv) Commerce Park: a group of commercial manufacturing or research facilities;
 - (v) Cultural Center: a facility for cultural events;
 - (vi) Facility Tour Location: a facility such as a factory, institution, or plant which conducts daily or weekly public tours on regular scheduled basis year-round;
 - (vii) Fairground: a tract of land where fairs or exhibitions are held and which has permanent buildings including, but not limited to, bandstands, exhibition halls, livestock exhibition pens, etc.;
 - (viii) Historical Site or District: a structure or area listed on the national or state historical register and recognized by the Department as a historic attraction or location. Historic districts shall provide the public with a single, central location, such as a self-service kiosk or welcome center, where motorists can obtain information regarding the district;
 - (ix) Recreational Area: a recreational attraction recognized by the Department including, but not limited to, bicycling, boating, fishing, hiking, picnicking, or rafting;
 - (x) Natural Phenomenon: a naturally occurring area which is of outstanding interest to the general public, such as a waterfall or a cavern;

(xi) Visitor Information Center: visitor information centers other than those operated by the South Carolina Department of Parks, Recreation and Tourism must meet the criteria outlined in the South Carolina Manual on Uniform Traffic Control Devices for Streets and Highways (SCMUTCD);

(xii) Zoological/Botanical Park: a facility in which living animals or plants are kept and exhibited to the public;

3. Maintain regular hours for that type of establishment;
4. Public restrooms;
5. Public telephones;
6. Adequate parking accommodations.

(2) Where space is available on an existing gas, food or lodging specific service panel, distances for participation may be extended to a total of six (6) miles from the interchange. Extension of distances will be at the sole discretion of the Department and will be measured as described in Section I (3). In all instances, businesses meeting all of the provisions of Section I will be given first priority.

(3) In determining distances from the interchange, roadway mileages are to be used, measured from the off-ramp terminal (where the off-ramp intersects the crossing road or frontage road) nearest to the business under consideration. the measurement shall begin where the left edge of the off-ramp pavement intersects the near edge of the crossing road pavement. If the off-ramp terminal is channelized, the measurement shall begin at the intersection portion of the terminal nearest to the business under consideration.

(a) For gas, food and lodging, the measurement will terminate at the main entrance of the building where payment is received for services rendered.

(b) For camping facilities, the distance will be measured to the registration office on the property of the camping facility.

J. Installation and Maintenance

(1) The cost to the business for participation in the specific service signing program shall be determined by the Department based on each business sign installed. Fees will include yearly renewal and installation or removal of signs.

(2) All business signs will be furnished to the Department by the business at no cost to the Department and shall be manufactured to the standard specifications and approved design of the Department. Business signs not meeting the specifications shall not be used.

(3) The Department shall be responsible for all required installation, routine maintenance, removal and replacement of business signs upon the specific service and ramp panels.

(4) The Department shall not be responsible for any damage, deterioration or loss of any business sign. The business shall be responsible for furnishing replacement business signs to the Department.

K. General Provisions.

(1) Upon application to participate in the specific service signing program, a business shall give written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color or national origin.

(2) If a business, at any time, fails to comply with applicable laws or these rules and regulations, the Department will take the necessary actions to remove the business signs and disqualify that business from further participation in the program, except when a business closing is due to damages sustained by fire, accident or similar causes and when the Department is notified in writing within ten (10) days of such closing. In such case the business sign shall be removed or covered until the business is re-opened.

(3) Any business that maintains any form of illegal outdoor advertising as determined by the South Carolina Highway Advertising Control Act shall be ineligible to participate in this program until such illegal advertising devices are removed.

(4) The Department reserves the right to cover or remove any or all business signs during maintenance or construction operations or for research studies, or whenever deemed by the Department to be in the best interest of the Department or the traveling public without advance notice. The Department reserves the right to terminate the program or any portion thereof by furnishing the business written notice of such intent not less than thirty (30) calendar days prior to such action.

(5) The Department will prescribe the format and content of standard application and agreement forms to be used in the administration of this program.

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(6) After a business has received approval of its application for participation in the program, an agreement, in accordance with these regulations, will be entered into between the Department and the business. Designs for the business signs should be submitted, if required, for approval as soon as possible upon application

Fiscal Impact Statement:

This regulation is not expected to cause a fiscal impact to either the State General Fund or to the Highway Fund. The cost of changing signs is expected to be offset by increased revenues from increased participation in the logo program.